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APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1969/1970

No. 1373/18

OCALA STAR-BANNER COMPANY, ET AL.,
PETITIONERS,

vs.

LEONARD DAMRON,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

PETITION FOR CERTIORARI FILED MARCH 30, 1970
CERTIORARI GRANTED MAY 4, 1970

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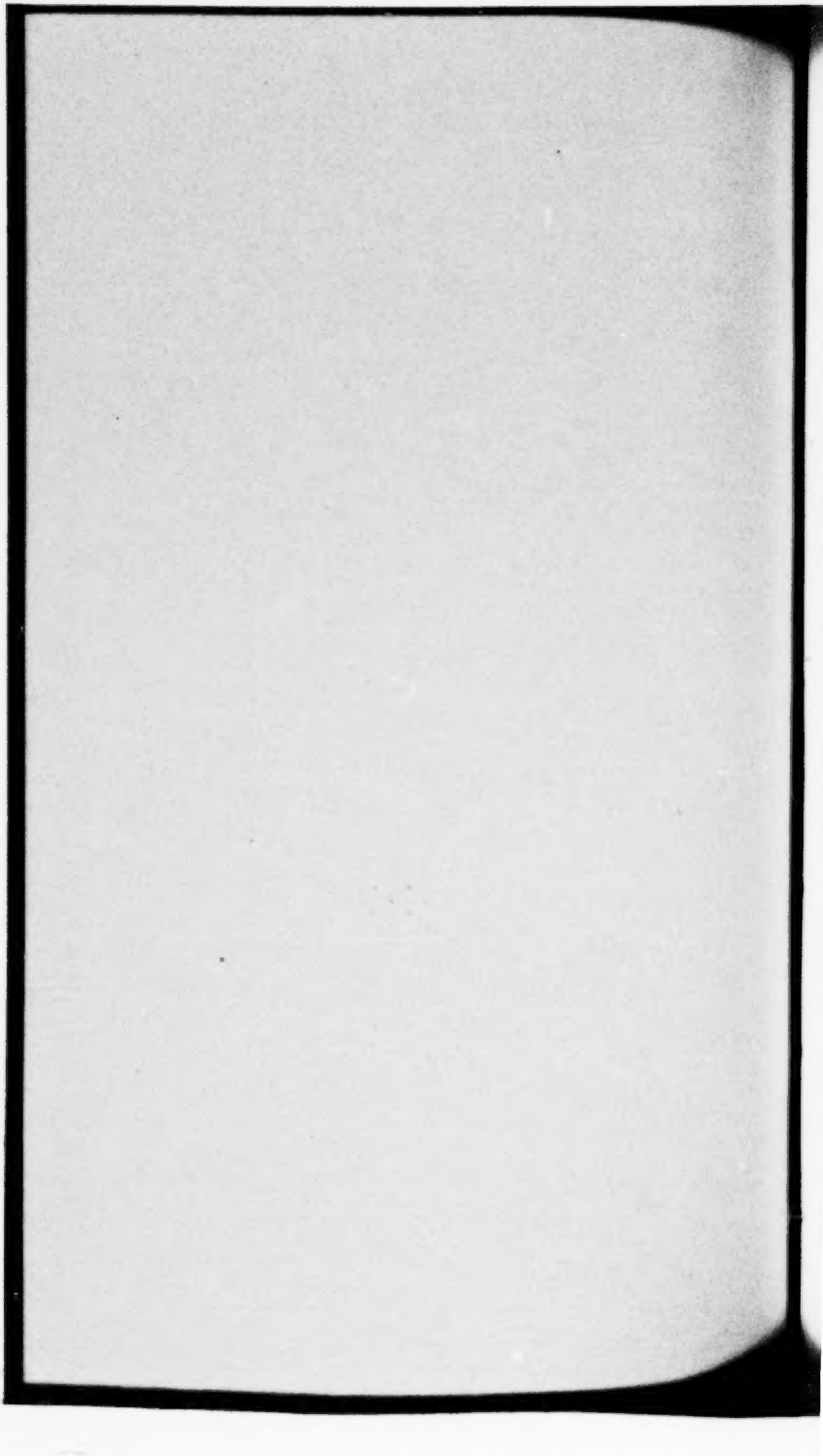

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IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR MARION COUNTY.
AT LAW NO. 14659

LEONARD DAMRON,
Plaintiff,

vs.

OCALA STAR-BANNER COMPANY,
a Florida corporation, and
LOYAL PHILLIPS, individually,
Defendants.

COMPLAINT

The Plaintiff, Leonard Damron, by his undersigned attorney, brings this complaint against the Defendants, Ocala Star-Banner Company, a Florida corporation, and Loyal Phillips, individually, and alleges;

1. The Plaintiff is a resident of Crystal River, Citrus County, Florida.

2. The Defendant, Ocala Star-Banner Company, a Florida corporation, has its principal place of business in Marion County, Florida, and is the owner and distributor of the Ocala Star-Banner, a newspaper which is generally distributed in Marion, Citrus, Levy and Sumter Counties, and elsewhere. The Defendant, Loyal Phillips, is a resident of Marion County, Florida, and is a Vice President of the Ocala Star-Banner Company, and Publisher of the Ocala Star-Banner.

3. That the Defendants caused to be published in the April 18, 1966 issue of the Ocala Star-Banner a defamatory article which appeared on page 9 thereof entitled: DAMRON'S CASE PASSED OVER TO NEXT U. S. COURT TERM, and said article began with the statement:

"A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harrold Carswell in Gainesville. * * *"

A copy of said article in total is attached hereto and made a part hereof as Plaintiff's Exhibit "A".

4. That on April 19, 1966, the Plaintiff did cause to be served, by mail at least five days before the institution of this action, upon the Defendant, Loyal Phillips, Publisher, who is a Vice President of the Ocala Star-Banner Company, and upon the Defendant, Ocala Star-Banner Company, a notice in writing specifying the aforesaid article and the statements therein which Plaintiff alleged to be false and defamatory, a copy of said notice is attached hereto and made a part hereof as Plaintiff's Exhibit "B".

5. That the aforesaid notice was delivered to the Defendant, Loyal Phillips, Publisher and Vice President of the Ocala Star-Banner Company, and the Defendant, Ocala Star-Banner Company, on April 20, 1966, a copy of the return receipt which is proof of service is attached hereto and made a part hereof as Plaintiff's Exhibit "C".

6. That the Plaintiff is and was on April 18, 1966, a public officer, being elected to the office of Mayor of Crystal River, Citrus County, Florida, and on said date was a candidate for the office of Tax Assessor for Citrus County, Florida, and was and is a businessman in said Town and County, owning and operating a garage. The Plaintiff, Leonard Damron, is the only garage owner by the name of Leonard Damron doing business in the Marion, Citrus, Levy and Sumter County area.

7. That the words as set forth above in the article published on April 18, 1966, from their common useage imputed the charge of perjury to the Plaintiff, all from which the electorate of Crystal River and Citrus County, Florida, and others

would believe that the Plaintiff had committed the crime of perjury, which is a felony punishable by imprisonment, and has left the impression that the Plaintiff was dishonest and had perjured himself in a United States Federal Court trial.

8. That the Plaintiff has never been charged with the crime of perjury and the statements contained in the article published by the Defendants on April 18, 1966, were false and libelous per se.

9. That the aforesaid article published on April 18, 1966 by the Defendants, set forth as Plaintiff's Exhibit "A", was published at a time and in a newspaper in general circulation in an area where voters resided who would cast their votes in a democratic primary on May 3, 1966, in which primary the Plaintiff was a candidate for the office of Tax Assessor of Citrus County, Florida, opposing two other candidates. That throughout the remainder of the political campaign, from April 18, 1966, the Plaintiff was repeatedly required to answer questions regarding the charges against him of perjury purportedly pending, and that although the Plaintiff fervently denied such charges and endeavored to make it known that the statements printed in said article were false, he has been unable to remove the damage to his reputation caused by said article.

10. That the Plaintiff continues to hold the office of Mayor of the Town of Crystal River, Citrus County, Florida, having been duly elected to said office prior to the publication of the said article attached hereto as Plaintiff's Exhibit "A", and Plaintiff desires to continue to hold this office for which he will be required to campaign and run for re-election in December of 1966, and overcome the false and defamatory statements in said article that Defendants have caused to be published, which continues to create doubt and suspicion in the minds of the people of Citrus County, Florida, as to the integrity of the Plaintiff.

11. That because of the actions of the Defendants in the

publication of the aforesaid article as attached hereto as Plaintiff's Exhibit "A", the Plaintiff has suffered irreparable damages to his reputation, as an individual, public officer, candidate for public office and as a businessman.

WHEREFORE, Plaintiff demands judgment for compensatory damages against the Defendants in the amount of Fifty Thousand ($50,000.00) Dollars, and his costs.

WHEREFORE, Plaintiff demands judgment against the Defendants for punitive damages in the amount of Five Hundred Thousand ($500,000.00) Dollars.

WHEREFORE, Plaintiff demands trial by jury.

EXHIBIT A TO COMPLAINT

Monday, April 18, 1966 Ocala Star-Banner 9

DAMRON CASE PASSED OVER
TO NEXT U.S. COURT TERM

INGLIS – A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harrold Carswell in Gainesville.

Damron was indicted by a Federal grand jury in Tallahassee last January and charged with perjury in a 1964 civil case which resulted in damages of $65,000 being awarded to a Yankeetown couple.

Mrs. Gail Finley alleged that Levy County Deputy Sammy Cason slammed on brakes causing her to injure her neck in October of 1962.

Cason and Deputy Walter Beckham went to Yankeetown with a warrant for the arrest of Mrs. Jean Ruth Sill, who was allegedly in the Izaac Walton Lodge.

According to officials, the Finleys interfered with the officers, were arrested and charged with interfering with arrest.

A conviction obtained in County Court has been upheld through appeals by the Florida State Supreme Court.

The civil suit which followed was filed under an old, little-used federal statute in which the Finleys charged former sheriff J. W. Turner and Cason with a violation of their civil rights.

Damron testified that he had seen Mrs. Finley in a neck brace in late 1957 or early 1958 several years prior to the incident, but numerous other witnesses, summoned by the plaintiff, gave testimony, saying that Mrs. Finley had not previously worn a brace.

Damron was released on $2,000 bond, following his arrest by federal marshals Jan. 27.

EXHIBIT B TO COMPLAINT

Crystal River, Florida
April 19, 1966

Mr. Loyal Phillips, Publisher
Ocala Star-Banner
P. O. Box 490
Ocala, Florida 32670

Dear Mr. Phillips:

There appears on page 9 of your publication dated Monday, April 18, 1966 delivered in Citrus County, an article entitled, "Damron Case Passed Over to Next U. S. Court Term".

This article names the defendant a local garage owner, *Leonard* Damron.

You are advised the undersigned Leonard Damron, has never been charged with the crime of perjury, is presently the Mayor of the Town of Crystal River and is a candidate for Tax Assessor of Citrus County, Florida.

The statements contained in the aforesaid article are false and defamatory because they allege a charge against the undersigned which is untrue.

Very truly yours,
Leonard Damron

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

MOTION TO DISMISS

The defendants, OCALA STAR-BANNER COMPANY, a Florida corporation, and LOYAL PHILLIPS, individually, severally move the Court to dismiss the Complaint filed against them upon the following grounds as to each of said defendants severally:

1. Said Complaint fails to state a cause of action upon which relief can be granted as against either of these defendants.

2. While said Complaint alleges a notice in writing of the alleged defamatory matter, said Complaint does not allege that the defendants failed to correct or retract said alleged defamatory matter.

3. Said Complaint fails to allege wantonness, recklessness, or carelessness on the part of the defendants or either of them.

4. Said Complaint fails to allege that the defendants and each of them severally published the alleged defamatory matter maliciously.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

MOTION TO STRIKE

The defendants, severally, by their undersigned attorneys, move the Court to strike the following portions of the Complaint herein on the ground that said portions of said Complaint are redundant, immaterial, scandalous, impertinent, and

prejudicial to the defendants and each of them severally, to-wit:

1. The first two clauses of the first sentence of paragraph six of the Complaint.

2. Paragraph nine of the Complaint and each clause and sentence thereof severally.

3. Paragraph ten of the Complaint and each clause and sentence thereof severally.

4. That portion of paragraph eleven of the Complaint alleging damage to plaintiff's reputation either as a public officer or as a candidate for public office.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

ORDER DENYING MOTION TO COMPLAINT

The Defendants' Motion to Dismiss and Motion to Strike portions of Plaintiff's Complaint coming on this day to be heard, after due notice of hearing, and upon due consideration of the arguments of counsel for the respective parties, it is

ORDERED and ADJUDGED that the Defendants' Motion to Dismiss and Motion to Strike be, and the same are hereby, denied and the Defendants shall have twenty (20) days from the date of this order in which to file their answer.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

ANSWER

(Showing Portions Stricken by Trial Court)

The defendants, OCALA STAR-BANNER COMPANY, a Florida corporation, and LOYAL PHILLIPS, individually, severally answering the complaint herein, say:

1. That they severally admit the allegations of paragraphs 1, 2, 3, 4, 5, and 6 of the complaint [but further show that said alleged defamatory article actually referred to a brother of the plaintiff named JAMES DAMRON who was the owner and operator of a garage in Inglis, Levy County, Florida, a neighboring community located a few miles north of Crystal River, Florida; and that both the plaintiff and his said brother, JAMES DAMRON, were and are well known in the Marion, Citrus, Levy, and Sumter county area, and that the federal court charge against said brother of the plaintiff had been the subject of previous newspaper publicity in said area, and that it was by pure inadvertence that the first name of the plaintiff was used in said alleged defamatory article in place of the first name of the plaintiff's brother, the said JAMES DAMRON.] (Material in brackets stricken by court).

2. Defendants severally deny the allegations of paragraph 7 of the complaint, [and show that as hereinbefore alleged the relationship of the plaintiff and his said brother was well known in the area involved as was the pendency of said charge against said brother of plaintiff.] (Material in brackets stricken by Court).

3. Answering paragraph 8 of the complaint, defendants severally say that they are without knowledge as to whether the plaintiff has ever been charged with a crime of perjury or any other crime, [but show that the plaintiff's brother,

JAMES DAMRON, was so charged,] and the defendants severally deny that the statements contained in the article complained of were false in any respect [other than the inadvertent substitution of the first name of plaintiff for the first name of plaintiff's brother and that defendants show that under all of the facts and circumstances said article was not libelous.] (Material in brackets stricken by Court).

4. Answering paragraph 9 of the complaint, the defendants severally admit that at the time of the publication of said article the plaintiff was a candidate for office as alleged in said complaint but severally deny that the publication of said article had any effect upon said election or damaged the reputation of the plaintiff.

5. Answering paragraph 10 of the complaint, the defendants severally admit that plaintiff continues to hold the office of mayor of Crystal River and show that since the filing of this suit the plaintiff has been re-elected to said office, thus demonstrating that the article complained of had no effect upon plaintiff's political career and in fact created no doubt or suspicion in the minds of the people of Citrus County, Florida, as to the integrity of plaintiff.

6. The defendants severally deny the allegations of paragraph 11 of the complaint.

7. Further answering the complaint herein, the defendants severally show that defendants' own employees discovered the erroneous use of the first name of plaintiff in the story concerning plaintiff's brother, JAMES DAMRON, on the day following the publication of said article, and immediately published a retraction and apology in the issue of the Ocala Star-Banner on Tuesday, April 19, 1966, the day following the publication of the article complained of, and before receiving plaintiff's request for retraction, and that on several occasions thereafter, both in a later issue of the Ocala Star-Banner and by personal contact by the employees of the Star-Banner with the plaintiff, made repeated apologies to

plaintiff for the inadvertent use of the first name of the plaintiff in place of the first name of the plaintiiff's brother in the said story complained of dated April 18, 1966, and defendants show that said inadvertent confusion in the first names of plaintiff and plaintiff's brother in said story did not result from any malice or ill feeling by defendants or any of the employees of the defendants or either of them towards the plaintiff.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

FINAL JUDGMENT FOR PLAINTIFF

This cause coming on to be heard before the Honorable D. R. Smith, one of the Judges of the above styled Court, and Thomas B. Ingram, foreman of the jury, and five other good and lawful men of the County of Marion and State of Florida, who being duly sworn according to law and after having heard testimony and evidence adduced before them, and having heard the charges of the Court, and being fully advised in the premises and having retired to consider their verdict, returned to open Court and rendered the following verdict:

> "We, the jury, find for the Plaintiff, Leonard Damron, against the Defendant, Ocala Star-Banner Company and Loyal Phillips, and assess the Plaintiff's actual damage at $22,000.00. So say we all.
> This 24th day of January, 1968.
>
> /s/ Thomas B. Ingram
> Foreman

It is therefore, ORDERED and ADJUDGED that the Plaintiff Leonard Damron, does have and recover from the Defendant, Ocala Star-Banner Company, a Florida corporation,

and Loyal Phillips, individually, the sum of Twenty-two Thousand Dollars ($22,000.00), plus Plaintiff's costs in the sum of One Hundred Seventy-six and 48/100 Dollars ($176.48), for all of which let execution issue.

DONE and ORDERED at Ocala, Florida, this 2 day of February, 1968.

/s/ D. R. SMITH
Circuit Judge

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

MOTION FOR NEW TRIAL

Now come the defendants and move the Court for a new trial (and in the alternative for judgment in favor of the defendants notwithstanding the verdict) on each of the following grounds, separately and severally:

1. The verdict is so grossly excessive as to shock the judicial conscience of the Court.
2. The verdict is contrary to the law.
3. The verdict is contrary to the evidence.
4. The verdict is contrary to the weight of the evidence.
5. The Court erred in granting the requested instructions requested by plaintiff and given by the Court as amended.
6. The Court erred in denying the instructions requested by defendants and not given by the Court.
7. The Court erred in amending the instructions requested by the defendants and given by the Court.
8. The Court erred in refusing to strike the testimony of the plaintiff, Leonard Damron, upon the voir dire as a predicate to the offer in evidence by plaintiff of three newspaper articles which plaintiff testified contained misstatements of

facts although the Court did refuse the offer in evidence of said articles.

9. The Court erred in allowing plaintiff's witnesses to testify over the objections of defendants as to unsworn statements by third parties not in the presence of either defendant as to the opinions and reactions of said third parties to the alleged defamatory article which was the basis for plaintiff's complaint.

10. The verdict "demonstrates a forbidden intrusion in the field of free expression" within *Beckley Newspapers Corp. v. Hanks* (1967) .... U.S. ...., 19 L ed 2d 248.

11. Although plaintiff himself injected in his complaint and in his evidence the alleged injury to him as a public official (mayor) and as a candidate for public office (tax assessor), the Federal Constitutional Law of Libel, as enunciated by the Supreme Court of the United States in *New York Times v. Sullivan* (1964) 376 U.S. 254, 11 L ed 2d 686; *Garrison v. Louisiana* (1964) 379 U.S. 64, 13 L ed 2d 125, 133-135; *Associated Press v. Walker* (1967) 388 U.S. 130, 18 L ed 2d 1094; and *Time v. Hill* (1967) 385 U.S. 254, 17 L ed 2d 456, 467; was not applied to the trial of the case and the verdict was not controlled by, or entered under, it.

12. There was no proper evidence of malice.

13. There was no proper evidence of express malice within the *Sullivan* rule.

14. The verdict is contrary to, and deprives defendants of, their rights under each the First and the Fourteenth Amendments to the Constitution of the United States.

15. "Government and public officials are 'fair game' to the free press." *Firstamerica v. Daytona Beach News-Journal* (Fla. 1967) 196 So.2d 97, 100.

16. The verdict was brought about by hearsay testimony.

17. There was no basis on which alleged damages for loss of gross profits as distinguished from net profits were allowed to go to the jury.

IN THE CIRCUIT COURT OF MARION COUNTY, FLORIDA

[Title Omitted]

ORDER DENYING MOTION FOR NEW TRIAL AND SETTING SUPERSEDEAS BOND

The Defendants, Ocala Star Banner Company's, a Florida corporation and Loyal Phillips', individually, motion for new trial (and in the alternative for judgment in favor of the Defendants notwithstanding the verdict) coming on to be heard after due notice to the parties, and the attorneys for the respective parties appearing and arguing said motion, the Court finds:

1. That the verdict for the Plaintiff in the amount of $22,000.00 is not excessive, and is supported by the evidence.

2. That the decisions of the United States Supreme Court on libel actions as decided in the case of the New York Times vs. Sullivan, and subsequent decisions cited in Defendants' motion for new trial, relating to public officials or public figures in the official conduct of their office or position are not applicable to this cause of action which was founded upon a newspaper publication of the Defendants which was libelous per se and made no reference to the public offices held or sought by the Plaintiff.

3. That there is no error in the proceedings.

The Defendants' attorneys, after the Court orally denied Defendants' motion for new trial, announced they would seek an immediate appeal and requested an order of supersedeas and conditions of the bond to be filed, and the Court being fully advised in the premises, it is

ORDERED and ADJUDGED, that

1. Defendants' motion for new trial (and in the alternative for judgment in favor of the Defendants notwithstanding the verdict) be, and the same is, denied.

2. That upon the filing, within seven (7) days, by the above named Defendants herein of a supersedeas bond in the sum of $25,000.00 with good and sufficient sureties to be approved by the Clerk of this Court, and conditioned that the Defendants will make payment of all costs, damages and expenses in this cause which Plaintiff may sustain by reason of the stay of these proceedings, in the event the final judgment appealed from shall be affirmed or the appeal dismissed, shall operate as a supersedeas in this cause and shall suspend and stay all further proceedings in this Court under the verdict and judgment which have heretofore been entered herein until the determination of said appeal.

DONE and ORDERED in Chambers at Ocala, Florida, this 7th day of March, 1968.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A. D. 1969.
Case No. K-86

OCALA STAR-BANNER COMPANY,
a Florida corporation, and
LOYAL PHILLIPS, individually,
Appellants,

v.

LEONARD DAMRON,
Appellee.

Opinion Filed April 22, 1969. (221 So.2d 459).

An Appeal from the Circuit Court for Marion County.
D. R. Smith, Judge.

Loftin & Wahl and Greene, Ayers, Swigert & Cluster, for Appellants.

Wallace Dunn, for Appellee.

PER CURIAM

Appellant has appealed a final judgment entered pursuant to a jury verdict awarding damages to the appellee in a libel action.

The libel consisted of an item published in appellant's newspaper stating that appellee had been indicted for perjury by the federal government. As it turned out, the publication was false in that it was appellee's brother who had been so indicted and not the appellee himself. A directed verdict on the question of liability was granted, and the case went to the jury on damages only.

Appellant contends that this case is controlled by the recent pronouncements of the federal courts on the law of libel as it relates to the news media typified by New York Times v. Sullivan, 376 U. S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, which in essence held that before a plaintiff may recover for libel from a newspaper, express malice must be shown. This principle seems to rest on the proposition that a newspaper has a duty to comment upon the manner in which our public officials perform the duties of their office and that in so commenting, the media is entitled to a greater latitude in bringing out matters concerning such officials which when spoken or written about a nonpublic official or figure might be libelous per se. We have no particular quarrel with that concept when its application is limited to cases giving rise to its emergence.

In the New York Times case, the court stated at 11 L. Ed. 2d 706:

> "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood *relating to his official conduct* unless he proves that the statement was made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard

of whether it was false or not."

The court further stated at page 708:

"We hold today that the Constitution delimits a State's power to award damages for libel in actions brought by public officials *against critics of their official conduct.*"

And again in footnote 23 at page 708:

". . . that the allegations in the advertisement concerned what was allegedly his official conduct as Commissioner in charge of the Police Department. . . . they must be read as *describing his performance of his official duties.*"

We have underlined certain phrases in the foregoing excerpts from New York Times to demonstrate the basis of our impression that it is the public officer's official conduct or the manner in which he performs his duties that affords the media a wide latitude for comment. It is the plaintiff officer's performance of duty that is so affected by the public interest which justifies the protection from libel actions afforded by the New York Times doctrine in absence of proof of malice. Indeed, the article itself makes no reference at all to the plaintiff's position as an officer or candidate for office. Hence, the record is devoid of any evidence to show that the appellant was acting in the area falling within the federal rule asserted.

An examination of the defamatory publication which gave rise to this case reveals that the plaintiff's official conduct or the manner in which he performed his duties were not the basis for the inaccuracy here involved; and, hence, it does not come within the protection afforded by the rule announced in the New York Times case. It follows therefore that the trial judge correctly held that it was unnecessary for the plaintiff to show malice.

We have considered the other matters raised by appellant and find them to be without substantial merit.

AFFIRMED.

RAWLS, Acting Chief Judge; JOHNSON and SPECTOR, J.J., CONCUR.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM A. D. 1970

Case No. 38,658

OCALA STAR-BANNER COMPANY,
a Florida corporation,
and LOYAL PHILLIPS, individually,
Appellants,

-vs-

LEONARD DAMRON,
Appellee.

Opinion filed January 21, 1970 (231 So.2d 822)
An Appeal from the District Court of Appeal, First District
Harold B. Wahl of Loftin and Wahl, for Appellants
Wallace Dunn, for Appellee
PER CURIAM.

Review having been sought by direct appeal from the District Court of Appeal, First District, and argument having been heard and the record having been examined, it is our opinion and we hold that the cause sub judice is not within the orbit of the jurisdiction of this court as set forth by Section 4(2), Article V, Constitution of Florida. Therefore the cause is dismissed ex mero motu.

It is so ordered.

ERVIN, C.J., ROBERTS, DREW, ADKINS and BOYD, JJ., concur (SC 8)

FLORIDA RULES OF CIVIL PROCEDURE

1965 Revision

Effective January 1, 1966
Supreme Court of Florida
Opinion 178 So. 2d 15
Rule 1.11 at pages 16, 19 and 20

RULE 1.11. DEFENSES.

(a) *When Presented.* A defendant shall serve his answer within twenty days after service of original process and the original pleading upon him, or not later than the date fixed in a notice by publication, which date shall be not less than twenty-eight nor more than sixty days after the first publication of the notice. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty days after the service upon him. The plaintiff shall serve his answer to a counter-claim within twenty days after service of the counterclaim, or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The service of a motion under this rule (except a motion for judgment on the pleadings) alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after service of the more definite statement.

(b) *How Presented.* Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the respon-

NOTE: Although the Florida Rules of Civil Procedure have been amended since January 1966, Rule 1.11 (b) has not been amended except it is now re-numbered as Rule 1.140 Defenses, in re Florida Rules of Civil Procedure 1966 Revision, 187 So. 2d 598, Page 605.

sive pleading thereto if one is required; except that the following defenses may be made by motion at the option of the pleader: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a cause of action, (7) failure to join indispensable parties. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. *The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not so stated shall be deemed to be waived* except any ground showing that the court lacks jurisdiction of the subject matter may be made at any time. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief.

(c) *Motion for Judgment or Decree on the Pleadings.* After the pleadings are closed, but within such time as not to delay the trial any party may move for judgment or decree on the pleadings.

(d) *Preliminary Hearings.* The defenses 1 to 7, subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment or decree mentioned in subdivision (c) of this Rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof shall be deferred until the trial.

(e) *Motion for More Definite Statement.* If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite

statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order or within such other time as the court may fix the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) *Motion to Strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) *Consolidation of Defenses.* A party who makes a motion under this rule may join with the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) *Waiver of Defenses.* A party shall be deemed to have waived all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a cause of action, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter. See Rule 1.39. The objection or defense, if

made at the trial, shall be disposed of as provided in Rule 1.15(b) in the light of any evidence that may have been received.

Committee Note: Substantially the same as Common Law Rule 13 and Equity Rule 33. Subsection (b) is amended to restore demurrer practice to the extent of requiring the specific grounds of defensive motions to be stated.
(Emphasis supplied)

FLORIDA RULES OF CIVIL PROCEDURE

1966 Revision

Effective January 1, 1967
Supreme Court of Florida
Opinion 187 So. 2d 598
Rule 1.470 at Page 626

RULE 1.470. EXCEPTIONS UNNECESSARY.

(a) *Adverse Ruling.* For appellate purposes no exception shall be necessary to any adverse ruling, order, instruction or thing whatsoever said or done at the trial or prior thereto or after verdict, which was said or done after objection made and considered by the trial court and which affected the substantial rights of the party complaining and which is assigned as error.

(b) *Instruction to Jury.* No later than at the close of the evidence, the parties shall file written requests that the court charge the jury on the law set forth in such requests. The court shall then require counsel to appear before it to settle the charges to be given. At such conference all objections shall be made and ruled upon and the court shall inform counsel of such general charges as it will give. *No party may assign as error the giving of any charge unless he objects thereto at such time or the failure to give any charge unless he requested the same.* The court shall charge the jury after the arguments are completed.

(c) *Orders on New Trial, Directed Verdicts, etc.* It shall not be necessary to object or except to any order granting or denying motions for new trials, directed verdicts or judgments non obstante veredicto or in arrest of judgment to entitle the party against whom such ruling is made to have the same reviewed by an appellate court.

Committee Note: Common Law Rule 39.

(Emphasis supplied)

ORIGINAL RECORD

VOLUME II

* * *

[TT 7] TRIAL PROCEEDINGS

Plaintiff's Testimony

LEONARD DAMRON, being first duly sworn by the Clerk of the Court to tell the truth, testified as follows:

Direct Examination

Q. BY MR. DUNN: Will you please state your full name? A. BY THE WITNESS: Leonard Damron.

Q. Mr. Damron, are you the Plaintiff in this action? [TT 8] A. Yes, sir.

Q. Where do you reside? A. In Crystal River.

Q. That Crystal River, Florida? A. Yes, sir.

Q. What period of time have you resided at Crystal River, Florida? A. Approximately thirteen years.

Q. What is your occupation, Mr. Damron? A. I'm a garage owner.

Q. For what period of time have you been a garage owner? A. Just---in Crystal River, thirteen years, approximately.

Q. Mr. Damron, have you been a subscriber to the Ocala Star-Banner? A. Yes, sir.

Q. For what period of time? A. Oh, probably six, seven years. I've been a *pre*scriber and I've bought the paper, usually daily.

Q. Have you acquired the paper daily? A. Yes, sir.

Q. Continuously during this period of time? A. Up til lately I haven't---haven't took the paper.

Q. Aside from being a garage owner in Crystal River, [TT 9] Florida, during the past thirteen years, what other activity have you been engaged in? A. I've been Mayor for four term---four terms, four full terms.

Q. And in this capacity have you attended Council meetings? A. Yes, sir.

Q. Regularly? A. Yes, sir.

Q. Mr. Damron, in the course of your attendance at Council meetings, have you had an occasion to read the Star-Banner on matters reported in these Council meetings? A. yes, sir; I read it daily. I read all the articles that's published about Crystal River, or most all of them.

Q. As to the articles that are published in the Star-Banner that affect you personally, what, if anything, did you do with them? A. Well, I kept a scrap book and---to where I could always refer back to my activities as Mayor and all the other civic organizations that I belong to.

Q. Mr. Damron, comparing the factual situation of the meetings and functions which you attended with the reports that appeared in the Ocala Star-Banner, did the Ocala Star-Banner report a factual state of account?

BY MR. AYRES: Just a minute, may it please the Court--[TT 10] A. No, sir---

BY MR. AYRES: To which the Defendant objects on the ground that it calls for a conclusion of the witness and invades the province of the Jury.

BY THE COURT: The objection is sustained.

Q. BY MR. DUNN: Mr. Damron, I show you a copy of the Ocala Star-Banner dated April 18, 1966, previously marked--marked as Plaintiff's Exhibit Number Three and ask you if you'll state what this paper contains?

BY MR. AYRES: Just a minute, may it please the Court. The paper speaks for itself.

BY THE COURT: Objection sustained.

Q. BY MR. DUNN: I ask you, Mr. Damron, if this article---may I at this time, Your Honor, read this into the evidence for the Jury?

BY THE COURT: Yes, sir.

BY MR. DUNN: Ladies and Gentlemen of the Jury, at the commencement of this action Counsel stipulated, and this is part of the record now, the publication which is being sued upon as it did appear in the Ocala Star-Banner on Monday, April 18, 1966. The article was captioned, "Damron's Case Passed Over to Next U. S. Court Term"; date line in Inglis. A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harrold Carswell [TT 11] in Gainesville. Damron was indicted by a Federal Grand Jury in Tallahassee last January and charged with perjury in a 1964 civil case which resulted in damages of $65,000 being awarded to a Yankeetown couple. Mrs. Gail Finley alleged that Levy County Deputy Sammy Cason slammed on brakes causing her to injure her neck in October of 1962. Cason and Deputy Walter Beckham went to Yankeetown with a warrant for the arrest of Mrs. Jean Rich Sell who was allegedly in the Isaac Walton Lodge. According to officials, the Finley's interfered with the offic*ials*, were arrested and charged with interfering with arrest. A conviction obtained in County Court has been upheld throughout *the* appeal to the Florida State Supreme Court. The civil suit which followed was filed under an old little used Federal statute in which the Finley's charged former Sheriff J. W. Turner and Cason with the violation of their civil rights. Damron testified that he had seen Mrs. Finley in a neck brace in late 1957 or early 1958, several

years prior to the incident, but numerous other witnesses summonsed by the plaintiff gave testimony saying that Mrs. Finley had not previously worn a brace. Damron was released on a $2,000 bond following his arrest by Federal Marshalls on January 27th.

Q. BY MR. DUNN: Mr. Damron, is this a true statement? A. No, sir; it's not.

Q. Would you please tell the Jury where it is false? [TT 12] A. I didn't hear you, sir.

Q. Please tell the Jury in what why this article is false? A. It says "Damron" and named Leonard---Leonard Damron for perjury, which I have never been charged with perjury or any other crime.

Q. Thank you, Mr. Damron. Immediately after you saw this article published in the newspaper, what did you do? A. I was so shocked that I---I didn't know what to do, Mr. Dunn. In fact, I was just stunned. I felt like it had ruined me.

Q. Ruined you in what way, Mr. Damron? A. Well, I was running for Tax Assessor at that time, and I'd already covered probably two-thirds of the County from door to door with political speeches, and running ads in the paper, and I was so upset that I was just---I couldn't sleep; I couldn't eat, and I---later on that night after I received the paper I called you and asked for your advice.

Q. What did you then do? A. I wrote the Ocala Star-Banner a letter the next morning asking them would they---for a retraction.

Q. Is this a copy of the letter that was written to the Ocala Star-Banner? A. Yes, sir.

BY MR. DUNN: At this time, Your Honor, I'd like to [TT 13] read this into evidence.

BY THE COURT: It's all right with me.

BY MR. DUNN: Ladies and Gentlemen of the Jury, this is a copy of a letter previously admitted into evidence that Mr. Damron has testified he wrote the Ocala Star-Banner.

Crystal River, Florida, April 19, 1966. Mr. Loyal Phillips, Publisher, Ocala Star-Banner, P. O. Box 490, Ocala, Florida, Zip 32670. Dear Mr. Phillips: There appears on Page Nine of your publication dated Monday, April 18, 1966, delivered at Citrus County an article entitled, "Damron's Case Passed Over to Next U. S. Court Term". This article names the Defendant a local garage owner, Leonard Damron. You are advised that the undersigned Leonard Damron, has never been charged with the crime of perjury, is presently the Mayor of the Town of Crystal River, and is a candidate for Tax Assessor of Citrus County, Florida. The statements contained in the aforesaid article are false and defamatory because they allege a charge against the undersigned which is untrue. Very truly yours, Leonard Damron.

Q. BY MR. DUNN: Mr. Damron, how did you transmit this letter to the Ocala Star-Banner? A. I sent it receipt requested---received receipt requested.

Q. I show you Plaintiff's Exhibit Number One and ask you what this is? [TT 14] A. This is the receipt that I got from the Post Office.

BY MR. DUNN: Ladies and Gentlemen of the Jury, this is a return receipt signed by Mr. Loyal Phillips of the Ocala Star-Banner. I give you these items for your inspection.

(Thereupon the Jurors examined certain items furnished by Mr. Dunn).

Q. Mr. Damron, have you ever had an occasion to call the Ocala Star-Banner regarding its news publications? A. Yes, sir; I've called the Ocala Star-Banner.

Q. When did you call them? A. Back somewhere '65; I believe about October, if I'm not mistaken.

Q. Who did you talk with? A. I talked with Mr. Loyal Phillips.

Q. Do you know who Mr. Phillips is? A. Yes, sir---

Q. ---or was at that time? A. Yes, sir; he's Vice President and Publisher. That's the one that I asked to speak to.

I asked to speak to the General Manager, Mr. Dunn, and they got me on the phone---or got him on the phone.

Q. What was the substance of your conversation with Mr. Phillips? A. I asked him to send someone to Crystal River to publish the news as it happened, true facts, and not editorial on the subject that they write on.

Q. What prompted you to call the Star-Banner? A. So many mistakes in the paper.

BY MR. DUNN: Will you mark these three items for identification, please?

(The instruments were marked by the Clerk) [TT 16]

(The instruments were examined by Mr. Ayres).

Q. Mr. Damron, I ask you what kind of mistakes do you have reference to? A. Well, printing objects that's not true.

Q. I show you Plaintiff's Exhibits marked for Identification Numbers Five, Six, and Seven, and ask you what they are? A. These are articles that---published in the Ocala Star-Banner that I cut out of the paper.

Q. Are the statements contained in these articles true? A. No, sir.

Q. Will you please state to the Jury in what way these articles are not true? A. Well, here's one article here, says: Both Damron and Kenoyer have been in support of the Federal financing plan offered the city. They walked out of the meeting yesterday after a heated discussion.

Q. What is the date of this article? A. This was October 1st, 1965.

Q. Is that statement true? A. No, sir. I have never walked out of a regular council meeting.

Q. I show you a second article and ask you what it is? A. It says: Mayor Damron has clashes with [TT 17] the council over the meeting Monday night but did not oppose a motion by Councilman Dave Evans which simply asked that all *accounts* against *Kenoyer* be *received;* passed unanimously.

Q. Is that statement true? A. It's false because---just because I have disagreed with the Council, I haven't clashed or haven't had these verbal duals that's been mentioned and all that.

Q. I show you a third article and ask you what this is? A. This is a article I cut out of the Ocala Star-Banner dated October the 5th, 1965, which states---you want me to state---

Q. If you will state---is the article true? A. It's untrue.

Q. In what respect? A. It says: Dunn presently paid one hundred dollars a month retainer and forty dollars plus mileage--forty dollars a meeting it's supposed to be, plus mileage---for each meeting he attends.

Q. Is this statement true? A. No, sir.

Q. In what respect is it not true? A. The Council paid Mr. Dunn one hundred dollars a year retainer fee and this was another way that she had---that this was blown up. [TT 18]

Q. Then, is your testimony that each of these article are incorrect? A. That's right.

BY M. DUNN: Your Honor, I would like at this time to introduce Plaintiff's Exhibits marked for Identification as Five, Six, and Seven be introduced into evidence at this time.

BY MR. AYRES: Objected to as irrelevant and immaterial, not constituting evidence of any defamatory charges against this Defendant, as being outside of the issues of this cause, not supported by any allegations in the Complaint, and putting in false and immaterial issues in this case.

BY THE COURT: Ladies and Gentlemen, I'm going to ask you to retire to the juryroom for a moment, please.

(Thereupon the Jurors left the courtroom at 1:35 p.m., after which time the following proceedings were had out of the presence of the Jury):

BY THE COURT: What gets me is you've permitted this testimony to go into evidence but you don't admit the exhibits into evidence. Where is the inconsistency?

BY MR. AYRES: Well, there's nothing, really, to rebut because this is on the voir dire on the admissibility of these. That's the reason we didn't object. This is on the voir dire on the admissibility of these three proffered exhibits, Your Honor. This is not testimony in chief aside from these [TT 19] exhibits. It's related solely to these exhibits, and this is on the voir dire qualifying them, nothing else, and it arises at this time.

BY MR. DUNN: Your Honor, I propose to introduce these items into evidence based on two fundamental principals, one of which, I believe, is cited in the Brown-Fawcett case which states that no one is going to advertise its libels or its mistakes in advance, and the second is a rule that is in the Brautigam versus The Miami Herald case, which says that a newspaper is required to use a high degree of care in the publication of the articles it composes. Now, based on that, and the prior testimony of Mr. Damron that he called the Star-Banner and complained of these articles that were being printed that were incorrect, I feel that these items are admissible to show the conduct of the Defendant in this case in continuing not to examine the information that it was receiving from Crystal River in the preparation of the articles that went into its newspaper. Now, this is---this---this all---- we can't just take one article and build a case and say this is the only thing we're going to talk about. We've got to show what the cand.or of---the tenor of this newspaper was, its own recklessness and carelessness. I mean, Mr. Ayres wants to talk about in--- his defense, as a matter of fact, that this was just a mere inadvertence, and when the newspaper was publishing errors and was called, and Mr. Damron has already testified was told [TT 20] that it was printing errors, it still went right on printing them.

BY THE COURT: Well, I'm going to refuse their introduction into evidence. You've gotten your testimony before the Jury and I think that's sufficient. I think if we put too

many articles into evidence we will confuse the issue before the Jury.

BY MR. DUNN: All right, sir.

BY THE COURT: But the article that you have admitted into evidence is---is admitted that it's libellous per se, and---

BY MR. DUNN: Yes, sir.

BY THE COURT: Anyway, call the Jury back.

(Thereupon the Jurors returned to the courtroom at 1:40 p.m., at which time the following proceedings were had in the presence of the Jury):

BY MR. AYRES: Have you ruled?

BY THE COURT: Yes.

BY MR. AYRES: In the presence of the Jury?

BY THE COURT: No; I don't think it's necessary, but I'll say that I denied the introduction of those documents into evidence.

BY MR. AYRES: Now, based on that, Your Honor, the Defendant moves the Court to strike and to withdraw from the consideration of the Jury all of the answers given by Mr. Damron [TT 21] in response to questions on the voir dire in an attempt to qualify these articles because the articles themselves having been refused in evidence, the testimony with regard to them likewise becomes utterly immaterial and would be prejudicial to the Defendant if it's allowed to remain in the record and to be considered by the Jury.

BY THE COURT: Motion to strike is denied.

BY MR. AYRES: All right, sir.

Q. Mr. Damron, what was the state of your mental health prior to April 18, 1966? A. It was good.

Q. After the article which was published on April 18, 1966, what was going on in your mind?

BY MR. AYRES: Just a minute, may it please the Court. That calls for the mental processes of the witness and we object.

BY THE COURT: The objection is sustained.

Q. Did the article of April 18, 1966, in any way affect you, Mr. Damron? A. Yes, sir; it disturbed me so---so much that I almost went to pieces. My wife did go to pieces; my children coming home from school was asking, Daddy, what are you in to---

BY MR. AYRES: Just a minute, may it please the Court; objected to as hearsay, and move to strike the answer.

BY THE COURT: Objection overruled. [TT 22]

Q. BY MR. DUNN: Did you understand what was happening to you during this period of time? A. No, sir; I didn't.

BY MR. AYRES: Just a minute, may it please the Court. We object to the question and move to strike the answer as to what his understanding was or what happened to him; calls for a mental process and conclusion of the witness.

BY THE COURT: Objection overruled.

Q. BY MR. DUNN: Mr. Damron, how long did this condition continue? A. I don't know whether I'm over it yet or not.

Q. How, if any, in any way were your normal duties impaired as a result of this article and your mental attitude?

BY MR. AYRES: Just a minute, may it please the Court. That calls for a conclusion of the witness.

BY THE COURT: Objection is overruled.

BY MR. DUNN: You may answer.

BY THE WITNESS: Will you ask me that again?

Q. BY MR. DUNN: How, if at all, were your normal duties affected after this publication? A. I was so disturbed that I felt like that I wasn't meeting the public properly when I was going door to door, and I would see large groups of people on the street. They would be talking, laughing; I'd walk up. They'd act like I had the plague, and in fact while I was making the rounds I even had a [TT 23] door slammed in my face after I told them who I was.

Q. Who slammed the door in your face, Mr. Damron? A. It was a lady in Inverness. I don't know her name.

Q. What were you doing at her door? A. I was asking for her support for Tax Assessor in the race.

Q. In what other ways were you affected as a result of the publication of this article? A. I was embarrassed. It hurt my business. It---in fact, it seemed like it changed my whole life at that time. I realize it now.

Q. How long did this condition continue as---as you have described in meeting the public? A. I think I'm gradually getting over it. In fact, I'm---I'm getting better.

Q. Did any of these things occur prior to publication of this article? A. No, sir; I was always accepted real well.

Q. Now, Mr. Damron, you testified that you were a candidate for Tax Assessor? A. Yes, sir.

Q. During what period of time were you running for this office? A. I qualified for the office May the 1st, 1966. [TT 24]

Q. May the 1st? A. No; March the 1st, 1966.

Q. And when was the election held? A. May the 3rd, 1966.

Q. Wasn't it this time---during this time this article was published? A. Yes, sir; the article was published the 18th of April, 1966.

Q. Immediately after the publication of this article, what was the reaction of people to you from whom you would solicit votes? A. Very cold.

Q. What did you try to do to overcome this situation? A. I---I thought I'd overcome it by just working that much harder. I worked from daylight til dark, and then after dark to the business places that I could still meet the people. I carried this paper here and the one that was printed the next day around with me to show the people it wasn't---wasn't me that this paper was even referring to, and--

Q. And what was their reaction? A. They were still

cold. Some of them act like they believed it; some of them didn't.

Q. Were you able to overcome the effect of this publication on your candidacy as Tax Assessor? A. No, sir. [TT 25]

Q. What was the result of the election? A. I got beat. Mr. Ed Tolle won the election. I think I received four hundred; I'd have to see the exact figure.

Q. I show you Plaintiff's Exhibit Number Four previously admitted into evidence and ask you if this is a true statement of the results of this election? A. Yes, sir.

BY MR. DUNN: For the Jury's convenience, this is a tabulation of the Polls and Precincts in Citrus County, Florida, of the election for the First Primary held on May 3rd, 1966, showing the tabulation of total votes, Mr. Leonard Damron 454, Robert Gilstrap 1,624, and Mr. Edgar Tolle 2,279.

(The Jurors examined the Exhibit).

Q. BY MR. DUNN: Now, Mr. Damron, you previously testified that you had also held office as Mayor of the City of Crystal River; is this true? A. Yes, sir.

Q. I believe you also testified that you had run for this office on four separate occasions? A. Yes, sir; that's---I run for five times. I fulfilled four full terms. I filled a unex----one term whenever Mayor Dumas passed away. I run for office and finished his term.

Q. In each of these elections, by what vote did you exceed your opponents? [TT 26] A. I had three opponents the first time. I "liked" 46 votes getting more than all three of them put together. Would you hand me that? I can't remember all of them, Mr. Dunn. That on top. (The witness was furnished a certain instrument by Mr. Dunn).

Q. And on the succeeding elections? A. I liked 20 votes getting three to one over my opponent the second time I run. The third time I run I didn't have any opponent at all.

Q. And the fourth time you ran? A. And the fourth---fourth time I run I liked 79 votes getting two----two to one.

Q. Now, Mr. Damron, when did you .... Mr. Damron, after the publication of the article which you're testified to as the Plaintiff's Exhibit Three, after this was published in the newspaper did you run for the office of Mayor of Crystal River again? A. Yes, sir; I run sometimes later after the article was published.

Q. When was this? A. It was---let me see that paper. That's after the publication.

Q. After the publication of this article did you run for the office of Mayor of Crystal River? A. Yes, sir; December the 13th, 1966. [TT 27]

Q. Is this the date of election? A. Yes, sir.

Q. During your campaign for this office, did you meet the same voter reaction as you had in prior campaigns for this office?

BY MR. AYRES: Objected to as leading, may it please the Court.

A. No, sir---

BY THE COURT: The question is leading.

Q. BY MR. DUNN: What, if any, voter opposition did you meet in campaigning for this office in the year 1966 that you did not meet in prior years? A. The vote was---the public was a little cooler than they were to start with, whenever I run before. They seemed like they wasn't as friendly as they had prior to that year.

Q. And by what were you elected in that election? A. I won by one vote.

Q. Now, then, Mr. Damron, I show you Plaintiff's Exhibit Number Four, which is a tabulation of the Citrus County ballots, and ask you to compare the ballots in those precincts which are located in or carry the vote of Crystal River with the vote that you received in any of these prior elections of the City of Crystal River which you testified to and ask you to tell the Jury what was the total vote that you

received in [TT 28] the Tax Assessor election in 1966? A. Well, in Tax---Tax Assessor, Mr. Dunn, has a lot bigger variety, lot bigger than just the Mayor, too. I received 137 votes with both precincts, North Crystal River and South Crystal River, which has a lot more voters in it than of the Mayor's race.

Q. What was the smallest number of votes that you received in the Town of Crystal River in any of your elections? A. 149.

Q. Now, then, Mr. Damron, as to the office of Tax Assessor for which you were running, do you know what the annual compensation is in that office? A. $9,000 a year.

Q. Mr. Damron, you previously testified, I believe, that you were a garage owner in Crystal River? A. Yes, sir.

Q. How long have you been in this business at this location? A. Approximately thirteen years.

Q. What has been your experience with regards to sales in this business prior to April 18, 1966? A. 1966; they've dropped off prior to the following---the previous year.

Q. Have you prepared a summary of your sales for the twelve-year period---excuse me---twelve-month period prior [TT 29] to April 1, 1966? A. Yes, sir.

Q. Have you prepared a compilation of your sales record subsequent to April 18, 1966, for a twelve-month period? A. Yes, sir.

Q. Was---from what record was this summary prepared? A. From my books.

Q. These your books of original entry? A. Yes, sir.

Q. Were these books prepared under your supervision? A. Yes, sir.

Q. Did you observe any particular difference in the summary of sales prior to April 18, 1966, and the twelve-month period subsequent to April 18, 1966? A. Would you rephrase that again? I didn't get you.

Q. Did you note any difference in the sales in your busi-

ness between the twelve-month period prior to April 18, 1966, and the twelve-month period subsequent to April 18, 1966? A. Yes, sir.

Q. What was that difference? A. Four thousand---hand me that. I have it wrote right there on that top sheet there, Mr. Dunn. (The witness was furnished a certain instrument by Mr. Dunn). $4,623.70.

Q. Now, Mr. Damron, did you notice any difference in your sales immediately after publication of this article? [TT 30] A. Yes, sir. In March, 1966, I had a gross sale $4,345.69, April, $2,508.95.

Q. Mr. Damron, what type of business did you receive prior to publication of this article insofar as patronage is concerned? A. It was very good, Mr. Dunn. We---I had a lot of work. In fact, I had to turn work away. After the article come out, I had to take everything come along.

Q. Has your business recouped? A. It's coming up, yes, sir.

Q. Back to the progressive scale that it was prior to publication of the article? A. I couldn't---I couldn't answer that up to date. I didn't go any farther than---I would say that the work is not as plentiful, no, sir, as it was before.

BY MR. DUNN: I have no further questions.

Cross Examination

Q. BY MR. AYRES: Isn't it true, Mr. Damron, that your business depends to a considerable extent upon the tourist business; aren't you located on U. S. Highway 19 running through Crystal River? A. Yes, sir; I do a lot of tourist business.

Q. And it fluctuates, then, with the tourist flow, doesn't it? A. Yes, sir; but usually--- [TT 31]

Q. And in the season you get better business than you do in the off season; is that generally true? A. No, sir; I couldn't say that, because local business always fills in to whenever---

Q. You mean to say that no matter how much additional tourist business you get in---during the season that during the off months you get more local business so that it evens it out? A. It usually does, yes, sir; it'll even up pretty good.

Q. And that fact is, isn't it, Mr. Damron, that while you say, and you're here suing the Star-Banner and Mr. Phillips for damages, you say that this loss of business was due to this article; you don't know of your own positive knowledge that that's true, do you? A. What other could you lay it on to, Mr. Ayres?

Q. I don't know, Mr. Damron. I'm just asking whether you can say positively that any business loss you've suffered is due to this article alone and solely? A. I--I would assume that it would because of the vote that I got and everything concerning it, yes; I---I couldn't no one can definitely say that that would be the sole reason.

Q. Yes, sir. Now, I believe you said that before this article ran you had a lot of work back logged? A. Yes, sir; I---

Q. And after it ran you no longer had your work [TT 32] back logged to that same extent? A. I have to take it as it comes now, yes, sir.

Q. I understand that, but this was your testimony, as I understand? A. Yes, sir; I've sent work to many other garages and service stations.

Q. Isn't it a fact, Mr. Damron, that during the time you were campaigning for Tax Assessor you were in and about your business very, very little? A. No, sir; I would stop in once and twice a day regardless of---of where I would be in the County.

Q. I understand that, but you weren't there full time, were you, because you were going, as you testified, door to door over the County? A. That's right, yes, sir.

Q. So, you might drop in for half an hour in the morning and evening, possibly, as you happened to come through Crystal River, but you weren't there full time or anything

like it, were you? A. No, sir; I wasn't there full time, no, sir.

Q. As a matter of fact, your brother, James Damron, was running the business for you, or operating it for you, during the whole time that you were campaigning for this office, wasn't he? A. He has worked for me off and on for quite some [TT 33] time, Mr. Ayres.

Q. I understand that, but what I'm asking you if it isn't a fact that you had him over there running the business for you during the time that you were campaigning for this office of Tax Assessor? A. Yes, sir, and I had another man helping him, too.

Q. I understand, but he was there; he left his business in Inglis and came over there and filled in for you while you were out campaigning in effect. Isn't this what happened? A. No, sir; he come with me in Decem---let's see; January---January of---

Q. Of '66? A. ---'66; yes, sir.

Q. And the election was on May the 3rd of that same year? A. May 3rd; right.

Q. So, he was there January, February, March, April and the first three days of May? A. That's right.

Q. Now, the fact is, isn't it, Mr. Damron, that in the issue of the Star-Banner of Sunday, January the 30th, there had been a long, long story about the charge made against your brother, James Damron, being charged with perjury in the Federal Court; isn't that a fact? A. Yes, sir; it was in the paper there. [TT 34]

Q. I show you a copy---a page of the Ocala Star-Banner which has been marked for Identification in the taking of depositions herein as the Plaintiff's Exhibit A and ask you to read that story, if you will, and state whether that story did run on the date that appears on that page? A. Yes, sir; it run on that page. I've already---

Q. All right, sir; and on the date that story ran, James

Damron had been working there full time in your garage in Crystal River for a month, hadn't he? A. I don't know whether--- what you're talking about, a month. He was there when it ran, yes, sir.

Q. All right; and if there's any free conversation resulting from a story about a criminal charge, there certainly had been a lot of talk about him, hadn't there? A. Well, I don't think he's known as well as I was, Mr. Ayres.

Q. Are you telling us that it wasn't generally known in Crystal River that you had a brother in Inglis who ran a filling station and garage in Inglis and who worked with you from time to time; are you telling us that? A. Yes, sir; it--- it was known to some people that I had a brother than run a station in Inglis.

Q. Now, when this story of which you complain ran, the story that has been admitted in evidence as---when this story ran of which you complain, it's been marked for Identification [TT 35] as Defendants' Exhibit B, I want you to look at that, look at this other story on your brother, Plaintiff's Exhibit Three, I want you to compare those two stories very carefully, if you will, Mr. Damron, and tell me if---whether or not the material contained in both of those stories isn't exactly the same in substance except for the single item of the first name of the party charged, nothing else? A. Yes, sir, Mr. Ayres; that's why I was so surprised them running them--- running this story at the time they did.

Q. Well, now, the fact is, of course, that Mr. James Damron, your brother, had pled not guilty in Federal Court and his case had been passed over. That story was factual, wasn't it? A. It was factual, sir, but his case was passed over the 5th and not the 18th.

Q. Be that as it may, it is---it is a true account of what happened? A. It wasn't up-to-date news, Mr. Ayres.

Q. And both of these stories are date-lined where, from where, Mr. Damron? A. It says---yes, sir, Inglis, right here,

real small print.

Q. And does the other one say the same thing in real small print? [TT 36] A. Yes, sir.

Q. So, they both came out of Inglis and not out of Crystal River? A. No, sir; that come out of Crystal River.

Q. Which came out of Crystal River, begging your pardon? A. The paper did. That's the ones I've----

Q. All right; how about this other one that I showed you, the story of January 30th on your brother, are you saying that one didn't come out in Crystal River? A. No; came out in Crystal River, yes, sir.

Q. But they were both date-lined Inglis; both stories? A. Yes, sir.

Q. All right, sir; now, as you've testified, the next day following your consultation with your attorney you wrote a letter to the Star-Banner calling their attention to the fact that this story of April 18th was not true insofar solely as to the first name of the party given; is that correct? This is a letter, I believe, which is Plaintiff's Exhibit Two. A. Yes, sir; this is the letter I wrote the Ocala Star-Banner.

Q. Now, when did they receive that letter, Mr. Damron, as appears with the return receipt? A. The 6th, the 20th, '66. [TT 37]

Q. So, they got that letter on April the 20th--- A. Yes, sir.

Q. Two days after the story ran on April 18th? A. Yes, sir.

Q. Now, I believe you mentioned that after the story appeared, fifteen days that the campaign remained up to May the 3rd, or fourteen days or two weeks, that you carried both this story of April 18th and the correction they printed with you when you went to knock on doors and see the voters; right? A. Yes; the one naming me and the one the following day, which would be the 19th. I took it with me, and that's the one in real small print.

Q. I show you now a page of the Ocala Star-Banner for Tuesday, April 19th, 1966, on which there appears an item in the lower right hand corner headed "A Correction". Is that the correction that you referred to? A. Yes, sir; this small one right here.

Q. All right, sir; now, that was run by them before they ever got your letter, wasn't it, of their own motion and voluntarily? A. I imagine it was.

Q. And they---so they caught their own mistake? A. Well, they should.

Q. And they did, didn't they, because they didn't [TT 38] have your letter until the next day, the 20th; right? A. No, sir.

Q. All right; now, that isn't all. Isn't it a fact, Mr. Damron, that not content with running that correction that when they did receive your letter, and also got a letter from one of your friends and supporters, Mr. Glen A. Bland--- A. Yes.

Q. ---that on April the 24th, which was Sunday, when the paper probably gets its widest readership, you know, they ran your letter in its entirety except for one paragraph with the heading---

BY MR. DUNN: Your Honor, we object; it's outside the scope of direction examination.

BY THE COURT: Objection is sustained.

Q. BY MR. AYRES: All right. You wrote them this letter, didn't you, Mr. Damron, the one that you---and you got the return receipt back? A. Yes, sir; I wrote the letter, Mr. Ayres, and they didn't print it in the paper the way that I wrote the letter.

Q. But they did print the letter in the paper, didn't they---- A. No, sir; not---

Q. ----with the exception of the last paragraph? A. Not in full, no, sir. [TT 39]

Q. With the exception of the last paragraph? A. That's right; they left the last paragraph off.

Q. If you'd like to check it? A. Yes, sir; I've already checked it, sir.

Q. They left out one paragraph? A. Yes, sir.

Q. Other than that they printed it in full; right? A. That's right.

Q. And they---they preceded it with the heading "Wrong Name", didn't they?

BY MR. DUNN: Your Honor, we object to this line of questioning; it's not part of the direct examination.

BY MR. AYRES: It is now, I believe, Your Honor.

BY THE COURT: The witness volunteered his information.

BY MR. AYRES: Yes, sir.

Q. BY MR. AYRES: I show you now this copy of the Ocala Star-Banner, edition of Sunday, April the 24th, Page Five, and ask you if two letters that appear in the upper left Five, and ask you if two letters thta appeal in the upper left hand corner of that paper did run, to your knowledge? A. Yes, sir; two the Editor; yes, sir.

Q. And they ran your letter with the exception of one paragraph, in full, and ran Mr. Bland's letter in full and they printed an Editorial apology and they headed it "Wrong Name" and they said "So Sorry", didn't they? [TT 40] A. Yes, sir; they said that. I would think they would print the whole thing, though.

Q. Yes, sir; all right, now---but you say that because of this publicity, although your brother had gotten a pretty good dose ahead of you, because of this publicity and this publicity alone you lost the race of Tax Assessor, Citrus County; is that correct? A. Yes, sir.

Q. And you say that's the reason that you only got 454 votes as compared to Mr. Gilstrap's 1,624 and Mr. Tolle's 2,279; right? A. Yes, sir.

Q. All right; now, of course, you went through that campaign and spoke at the rallies? A. Yes, sir.

Q. In the speeches by you and the other candidates did

you and the other candidates state your qualifications for this office? A. Yes, sir.

Q. Did you hear Mr. Tolle tell the voters at these rallies---

BY MR. DUNN: Your Honor, this again is outside the scope of direct examination. He's going into the qualifications of the candidates on this election.

BY THE COURT: Objection is overruled. [TT 41]

Q. BY MR. AYRES: Did Mr. Tolle tell the voters of Citrus County that he had been for many years a realtor and appraiser practicing at Homosassa and Crystal River? A. I don't know what---he probably did; he was a real estate man.

Q. And has been for some years, to your knowledge, hasn't he? A. Yes, sir; he was a builder at one time, too.

Q. He had a real estate office and registered real estate broker under the Laws of the State of Florida, to the best of your knowledge, wasn't he, Mr. Damron? A. Yes, sir; he was a real estate man.

Q. All right; in addition to that he was during this campaign the Deputy Tax Assessor of Citrus County, wasn't he? A. He worked in the Tax Assessor's Office, yes, sir.

Q. Yes, sir; in fact, his brother-in-law, who was ill at the time, was the Tax Assessor; right? A. Yes, sir.

Q. And he made these qualifications that he had known to the voters, didn't he, in every way that he could? A. I really couldn't tell you that. That would be my---my opinion and---that's not the facts.

Q. Well, I'm not asking for an opinion. I'm just asking you did you hear him say these things at these rallies? [TT 42] A. I---I couldn't answer that question. Your said he made it known; I don't know.

Q. Well, did he tell them about it, Mr. Damron? A. I don't know what he told---

Q. You didn't listen to his speeches on the platform? A. I was concerned about mine and---

Q. You didn't listen to your opponents' speeches? A. Yes,

sir; I listened to them, but I couldn't---

Q. Did he talk about his--- A. ---tell you all of what he said, no, sir.

Q. Well, I'm sure of that, but didn't he talk about his qualifications, the fact that he was a broker and that he was working in the Tax Assessor's Office and, therefore, he knew this job and was qualified to fill the post? A. Yes, sir; he probably told them the same as I did.

Q. Yes, sir; all right. Now, the second man in that race was a Mr. Robert Gilstrap; is that correct? A. Yes.

Q. Was he holding office at that time, Mr. Damron? A. Yes, sir; he was holding a County office.

Q. Was he in fact Chairman of the Board of County Commissioners? A. I believe so, yes, sir.

Q. And had he served as a County Commissioner for [TT 43] twelve years? A. I believe so.

Q. And been elected County-wide in Citrus County three times? A. I believe so.

Q. So, it would be fair to say, wouldn't it, that he was well and widely known to the voters of Citrus County; isn't that true? A. I would say he was known, yes, sir.

Q. All right, sir; and did he have any background, Mr. Damron, as a real estate appraiser or broker, to your knowledge, Mr. Gilstrap? A. To my knowledge, no.

Q. Actually, he operates a furniture store in Homosassa, doesn't he? A. No, sir.

Q. Are you sure? A. Homosassa?

Q. Well, I thought he so testified. Well, does he operate a furniture store, then, somewhere? A. He owns a furniture store in Inverness.

Q. It is in Inverness; all right. Now, but he had no special qualifications for the office other than the fact that anyone can run who is a citizen and voter; isn't that true? A. No, sir; not anyone can run unless you are [TT 44] qualified.

Q. A citizen and voter, that's the only qualifications that

the Law prescribes; isn't that true? A. Yes; you said "anyone"; yes, sir.

Q. All right; now, in your own case, Mr. Damron, had you ever served as a---ever been employed or been in the business of being a real estate broker or appraiser, anytime? A. I have purchased land.

Q. For your own account, but you haven't been in the real estate business as such as a registered real estate broker, have you? A. No, sir.

Q. And the business of making appraisals of land? A. No, sir; except as Mayor of Crystal River I have had a lot of experience with real estate.

Q. Well, I mean, you were in about the same situation, then, as Mr. Gilstrap was as County Commissioner and Chairman of the Board; he had a good deal of experience in real estate--- A. We had to work the budget through---through the taxes, so we had four years of experience with---with appraising and working the budget out with taxes.

Q. Now, you say that after this article appeared that you suddenly began to get cold shoulders from voters, in so many words; right? [TT 45] A. Yes, sir.

Q. Isn't it true in every race, in your own experience, Mr. Damron, over many years as a political figure as you have been, that from the time you get up to a week to ten days from the Primary that people have gotten down to the point where they've, to a very considerable extent, made up their minds? A. I would say a lot of people don't make up their mind until maybe even the day before.

Q. I would believe that's true, but wouldn't you say that a substantial proportion of the voters, though, actually by two weeks to ten days before election, have very largely made up their minds and made their choices? A. I wouldn't think so, because that's why you have your political rallies right up to the date.

Q. I understand that, but what you're saying is that sud-

denly, overnight, you lost all your appeal to the voters--- A. It seems that way---

Q. ---solely as a result of this story? A. Yes, sir; it seems that way.

Q. Yes, sir; now, in spite of this story, Mr. Damron, and the evil effects that you attribute to it, you were again elected Mayor of Crystal River that same December, were you not? A. Yes, sir. [TT 46]

Q. And you say, however, that you were only elected by one vote? A. Yes, sir.

Q. Whereas in previous elections you'd been elected by a substantial majority? A. Yes, sir.

Q. Now, in the previous elections, other than the first one, you had little or no opposition; isn't that true? A. The first time I run, Mr. Ayres, I had the President of the Bank as my opponent, a former Councilman as my opponent, and a man's father who was former mayor---his son run against me.

Q. I understand that, and you said you almost won it in the first and had to run off with one of them? A. No, sir; I got---I liked 46---I think it was 46 votes---46 votes getting more than all three of them put together.

Q. That's correct; so you had a run-off with the highest---next--- A. No, sir---

Q. ---or he conceded? A. No, sir; I liked 46 votes getting more than all three of them, so it wasn't a run-off.

Q. Oh, it was by a majority? A. Yes, sir. [TT 47]

Q. I see; or a plurality, I should say. The one that got the most votes, then, was elected? A. Yes, sir.

Q. There was no run-off between the high man and the second high man. All right; now, in the later races, however, you had little or no opposition until you came up with this election with Stewart Ayers; is that correct? A. Yes, sir; I had a former County Commissioner, Mr. Harley Levins, run against me.

Q. When was this? A. That was December 14th, 1965.

Q. All right; and other than that you had no opposition, I believe? A. Yes, sir; a former mayor run against me December the 10th, 1963.

Q. All right; and anybody in '64? A. No opponent in---let's see---'64, I'm sorry; '64 was no opponent---let's see; no opponent in '64.

Q. All right, sir; now, isn't it true that in this Mayor's race which ended in the election in December of 1966, about six months after this story of which you complained appeared where you only won by one vote and which you attribute now to this story and to no other reason, isn't it true that your opponent in that race was a lawyer in Crystal River named Stewart Ayers? [TT 48] A. Yes, sir; he was a real estate attorney.

Q. Yes, sir; and isn't it true that the question of whether he or your present attorney here, Mr. Dunn, was going to be City Attorney for Crystal River had been a big issue before you and the Council during this year preceding the election? A. Well, rephrase that again, Mr. Ayres; I didn't get it.

Q. I say, isn't it true that there'd been a considerable controversy with the Mayor and the Council there in Crystal River as to whether Mr. Dunn was to be the City Attorney for Crystal River or whether Mr. Ayres was to be the City Attorney for Crystal River; isn't that correct? A. We had to dismiss Mr. Ayres as City Attorney. We used him---I believe it was four months and six days that we found out that he wasn't qualified.

Q. All right; well, he---he replaced, however, Mr. Dunn, didn't he? A. Yes, sir.

Q. Over your opposition? A. Yes, sir; I was---

Q. And wasn't that one of the biggest issues in this Mayor's race? A. No, sir.

Q. It was an issue, wasn't it? A. This same---might say click was still working. [TT 49]

Q. The same click. Have you been opposed through the years by a click in Crystal River, Mr. Damron? A. Lately, yes, sir; yes, sir---

Q. Lately. A. Lately.

Q. And isn't the existence of this click that accounts for, perhaps, your loss of political favor and the loss of business rather than any publicity? A. No, sir. They just didn't want me in office, I guess.

Q. Well, this---this, Mr. Damron, is what happens to a lot of old politicians, isn't it? A. Yes.

Q. They wear out their welcome; isn't this true? A. Well, four---four and a half years wouldn't wear out the welcome.

Q. Well, I mean, I know you were willing and ready to serve and I'm sure that you served as long, perhaps, as you felt able and the people wanted you, but the fact is in your experience, Mr. Damron, politicians do wear out their welcome, don't they, and they get voted out of office and other people get voted in; isn't this true? A. I don't know whether it is or not, Mr. Ayres.

Q. You haven't observed that? A. You're asking me for opinion again. [TT 50]

Q. No, sir; I'm just asking you for a fact of political life? A. No, sir; I couldn't give you a fact on that. I don't---no, sir; I couldn't.

Q. Now, this last time you ran and were defeated by the same opponent, I believe, weren't you? A. Yes, sir.

Q. By 28 votes? A. Twenty---27, 28 votes.

Q. And isn't it true that one or more of the Council members who were the anti-click or in your click were also defeated in this last election? A. I don't know who you talking about. I know one of the Council members did get beat.

Q. By---by a substantial majority? A. I couldn't tell you his vote.

Q. He did get defeated? A. Yes, sir.

Q. Had he more or less taken your side in the squabble

over the City Attorney and the sewer financing? A. I don't really know what his opinion is, sir.

Q. No; I'm asking about what he did in these frequent controversies you had over there with regard to a sewer program and with regard to the City Attorney; wasn't he on your side in most of those controversies, Mr. Damron? [TT 51] A. When he felt I was right, he would go along with it, yes, sir.

Q. And by some strange coincidence he generally felt that you were right, didn't he? A. Well, most of the times I---

Q. Most of the time he did? A. ---I was---I was right, Mr. Ayres. The people---

Q. But all of the Council didn't go along with you, did they, Mr. Damron? A. Two-thirds of the voters, Mr. Ayres, signed a petition for me to do this; so, I guess they must be in majority.

Q. Was that petition circulated by one of your witnesses who is coming in here today, Mrs. Betz? A. It was circulated by the citizens of---of---

Q. Was she one of them who circulated it? A. I don't know whether she was or not. She---it was a Citizens' Committee.

Q. I see; you don't know now who was on it. They were your friends, of course, aren't they? All the people in Crystal River is my friends, Mr. Ayres.

Q. Yes, sir; but they don't all vote for you? A. They must not, no, sir.

Q. And what is the voting population of Crystal River, Mr. Damron? What's the total number of registered [TT 52] voters, approximately? A. I think around six hundred and thirty something.

Q. And not nearly that many actually vote in most of your elections, do they? A. No, sir.

Q. In fact, it's a town not too much larger than Belleview and Dunnellon here in Marion County; right? A. About

twenty-five hundred, I guess.

Q. And there's been a great deal of publicity about factionalism and clicks on the---in the City Government of Crystal River over the years, hasn't there? A. I couldn't answer you.

Q. Just as there has been in connection with Dunnellon and Belleview in this County; isn't that true? A. I couldn't tell you about---

Q. You don't know that? A. ---other years. The only thing I can tell you about is when I was in office.

Q. But you tell us now that during this period there was a click that was fighting you; right? A. It seemed like one of the clicks was in the newspaper, Mr. Ayres.

Q. And isn't it a fact, Mr. Damron, that what you're really trying to accomplish here is to get Lucy Ware fired? A. No, sir; I called and told them about her---her [TT 53] writing, yes, sir.

Q. Didn't you also call them and tell them, Mr. Damron, that if they would fire her you wouldn't even bring this lawsuit that you've brought here? A. Did I phone them and tell them that?

Q. Yes, sir? A. No, sir; I didn't.

Q. You didn't do that? A. No, sir.

Q. But you certainly would be happy if they'd fire Lucy Ware, wouldn't you? A. I would like for them to send someone over there to print the news as it happens correctly.

Q. Other than Lucy Ware? A. If she would print it correctly, I'd be glad to have her. If fact, she was---she's my next-door neighbor, couple of doors down.

Q. That's right; but actually what you're after in this suit is to get her, isn't that true? A. No, sir; I'm for getting good, true publicity.

Q. Yes, sir; now, what's the name of the lady who you say slammed the door in your face? A. I couldn't tell you, sir. I---I was covering the County, and it happened over in

Inverness.

Q. Mr. Damron, you're under oath, of course. [TT 54] A. Yes, sir; I---I realize that, sir.

Q. Do I understand you to be saying that this is the only time in your political career that this ever happened to you, that a voter slammed a door in your face? A. Yes, sir; yes, sir, it is. That's what shocked me so.

Q. And don't you recognize, however, the fact in your general knowledge of political campaigning if that's true you're the luckiest fellow alive? A. Is that right? Well, I was accepted real well, then, at other times.

Q. Mr. Damron, do you remember giving your deposition in this case on September the 21st, 1967, before the Court Reporter here in the Court House in Ocala? A. Yes, sir.

Q. During those---in those depositions were you asked these questions and did you give these answers, on Page Sixteen on Line Nineteen: Well, then, Mr. Damron, do you or don't you know anyone now who stopped trading with you because of this story? Answer: I can't swear that was the reason they stopped doing business with me until I find out. Do you remember being asked that question--- A. Yes, sir.

Q. ---and giving that answer? Then, this question: All right; now, do you know the names of any individuals whom [TT 55] you believe may have stopped trading with you because of this story? And after some conversation---no, you finally never answered that one. All right; let's put it this way. Can you furnish us the names---we have a pretrial conference set in this case, Mr. Damron, as you probably know for September the 27th. That's six days from now. Will you get those names and furnish them to your attorney so he can furnish them on pre-trial conference? I'll be glad to get the names and find out if that's the reason they quit trading with me. Did you give that answer also? A. Yes, sir; I give it.

Q. Now, have you come up with any---we're here on trial some six months after you gave that deposition. Can you

give us now the name of persons who actually stopped trading with you because of this publication? A. No, sir; I can't.

Q. You cannot? A. Because---

Q. No; I just want the answer. Your Counsel can let you explain it as he will. Now, as you sit here now, Mr. Damron, can you give us the name of a single voter in Citrus County who did not vote for you in this Tax Assessor's race because of this publicity, of your own knowledge? A. Of my own knowledge, no, sir; it'd be impossible to give any name like that. [TT 56]

BY MR. AYRES: That's all; you may examine.

Re-Direct Examination

Q. BY MR. DUNN: Mr. Damron, on cross examination inquiry was made of you regarding business---the fact that you were out of your business during the political campaign. Isn't it---what staff work did you have; did you have anyone working in your business? A. Yes, sir; I had my brother working for me which has always filled in for me whenever I needed him.

Q. Was your garage fully staffed? A. Yes, sir.

Q. Were people coming in in normal order? A. You mean customers?

Q. Yes, sir. A. Not after the article; it's dropped down.

Q. I'm talking about before the article? A. Yes, sir; it was coming in---

Q. Did you have any diminishing trade between the time you qualified and started running and the date that the article was published? A. No, sir; none whatsoever.

Q. Was there a diminishment after the article was published? A. Yes, sir; like I said, we had to take what come.

Q. Mr. Damron, you testified you'd been in these [TT 57] political races. What were the qualifications for a person running for Tax Assessor's Office? A. They had to live in

the County one year, be a registered voter, and State---State---State one year and County one year.

Q. Are not people elected to public office, such as Tax Assessor, on a popular vote? A. Yes, sir.

Q. This is the will of the people, is it not? A. Yes, sir; it is.

Q. I believe you---in cross examination question was raised regarding your ability in real estate. Mr. Damron, would you tell the Jury what experience you've had in real estate work? A. Every year we have to set a budget. We run the Town of Crystal River and we have to arrive at our budget with real estate taxes, and personal taxes. We have to know how to assess property and to make the property equal to where it won't be a burden on anyone. This we have done ever since I've been in office as Mayor.

Q. Now, Mr. Ayres asked you about your deposition which he took and requested that you state to him the name of someone who stopped trading with you as a result of this article. Mr. Damron, did the people tell you when they stopped trading with you? [TT 58] A. No, sir; they won't. Mr. Dunn, may I say one thing about---since you got on to the tax? This is the first year in history of Crystal River that we were able to drop our millage to five mills in the City by watching the budget and using the money properly.

BY MR. DUNN: I have no further questions.

Re-Cross Examination

Q. BY MR. AYRES: Mr. Damron, it is true, then, that anyone can run for this office of Tax Assessor so long as they have lived in the State for one year and County for six months and they're a registered voter; that's correct? A. I believe that's right.

Q. Those are the only legal qualifications to hold that office. Now, Mr. Damron, what are the duties and responsi-

bilities of the Tax Assessor---County Tax Assessor in Florida; would you mind telling us? A. Yes, sir; he has to be able to appraise property properly, although we had---I forget now what the outfit's name to come in---professional outfit and appraise the entire County which I feel like that--and that happened before this election, which would've made anyone--be a very easy job for anyone at that time. They were suppose to be professionals.

Q. Isn't it true that the final responsibility for fixing all values rests solely on the Tax Assessor? A. Fixing all values at that--- [TT 59]

Q. On all parcels of real and personal property in the the County? A. At that time they give the authority to this professional outfit to reappraise the County as they thought that it should be.

Q. Well, isn't it true, Mr. Damron, that under that contract the Tax Assessor was the Chief Assessor and had the final word, yes, sir, or did you ever read the contract? A. I never read the contract. I cannot say.

Q. Well, then, you really don't know, do you, Mr. Damron? A. No, sir; I didn't read that contract, no, sir, but I do know---

Q. So, you were running for this office and you didn't take the trouble to even read the contract under which this assessment firm or appraisal firm was making reappraisals of property in the County? A. Mr. Ayres, I don't believe any one of us read the contract, but I will tell you what the--the appraisal company that did appraise---

Q. I would like for you to just answer my question, if you would, Mr. Damron. A. All right, sir.

Q. You don't know, do you, and you didn't take the trouble to read the contract? [TT 60] A. The County Commissioners had that contract, sir.

Q. But you could've---it was a public record, wasn't it? A. I wasn't butting into their business. I had the Town's

business to take care of.

Q. But you were offering yourself for the office of Tax Assessor? A. Yes, sir.

Q. Now, what is the governmental structure of the City or Town of Crystal River, Mr. Damron; you have a mayor and a five-member council, or what? A. Yes, sir.

Q. Isn't it true, Mr. Damron, that under the Charter of the Town of Crystal River the legislative body is the Council? A. You might---

BY MR. DUNN: Your Honor, this isn't proper re-cross.

BY MR. AYRES: I offer it subject to being connected up. I submit that it is.

BY THE COURT: Objection is overruled.

Q. BY MR. AYRES: Aren't they the legislative body? A. Yes, sir; we work together.

Q. I understand that, but actually isn't it true the only power you have as Mayor is to veto ordinances and to supervise the enforcement of the ordinances? A. I am to advise the Council in all matters---all [TT 61] matters---

Q. Yes, sir; but you don't have a vote, do you? A. No, sir; I don't have a vote.

Q. That's right. A. I advise the Council, and I am the executive head of the Town.

Q. That's correct. A. Yes, sir.

Q. But, actually, you have no vote on that Council, do you? A. No, sir; I don't have a vote on the Council, no, sir.

Q. And, so, when you say that "we" adopted a budget, you know in fact that it wasn't adopted by any vote of yours; isn't that true? A. No vote, no, sir, but it was under my help, my supervision.

Q. Well, I'm sure you raised your voice. I gather, apparently, from this publicity you repeatedly did. I'm not denying that, Mr. Damron, but the fact is you had no vote, did you? A. No, sir; I don't vote on any issues---

Q. On the adoption of the budget or anything else of

City affairs other than the enforcement of the City ordinances; is that correct? [TT 62] A. I see that all ordinances are enforced of the Town with---

Q. That's right--- A. ---and they were under my supervision.

Q. ---that's your---that's your primary duty, plus you do have a veto power and that's it? A. Yes, sir; I have to approve all ordinances.

Q. In other words, you're in the same situation as the Mayor of Ocala here is, aren't you, so far as you know? A. Well, you have a lot of experience with real estate.

Q. Well, I don't answer questions, Mr. Damron, but I'd be surprised to find that the Mayor has any hand in making the budget, and I believe you---you didn't actually have a hand, and I know you didn't have a vote by your own testimony. Mr. Damron, do you think it's true that the voters do elect people to an office that calls for special qualifications solely on the basis of their personal popularity; is that what you believe?

BY MR. DUNN: Your Honor, I object to this question because it calls for a conclusion of the witness, and I move to strike the prior question of process which Mr. Ayres promised to connect up because I don't see how he connected it up.

BY THE COURT: Motion to strike is denied. The objection is sustained.

[TT 63] BY MR. AYRES: That's all.

BY MR. DUNN: I have no further questions, Your Honor.

* * *

[TT 66] Plaintiff's Witness

KIERNEY

Q. During the time that you've known Mr. Damron, have you met others who also knew him? A. Yes.

Q. Have you met others who did not know him? A. No,

I didn't run across anyone that didn't know him. Pretty near everybody knows him, Mayor of the Town and everything.

* * *

[TT 66] Q. Do you know his general reputation? A. Mr. Damron has a good reputation as far as I know. I've never heard anyone say anything mean about him.

Q. Now, Mrs. Kierney, during the time Mr. Damron was running for Tax Assessor of Citrus County, what if any campaign work did you do for him? A. Well, he asked me to speak a good word for him and I did, and most of them seemed interested but there was a few of them---I hadn't seen this last thing come out in the paper yet and some of them said, Mrs. Kierney, you ask us to vote for a rat like that?

* * *

[TT 67] Q. BY MR. DUNN: Mrs. Kierney, did---in your travels [TT 68] as you previously testified to, were comments made to you by people with whom you came in contact? A. Yes.

Q. Would you please state what these comments were before this article was published?

* * *

A. Well, the comments seem---seemed to be all right. They spoke well of him, but when I went back to pick some of their money up they called him a rat and a crook.

Q. BY MR. DUNN: Was this after this article was published? A. Well, I---I seen this after, yes.

Q. I mean, the statements that you're testifying to now, were they made to you after this article of April the 18th, 1966, that published this report? A. Yes.

Q. Now, Mrs. Kierney, you testified that you come in contact with Mr. Damron quite regularly. Did you have an occasion to observe his physical appearance at this time prior to the article---time the article was printed? A. Right after that, two times---

Q. Answer my question, Mrs. Kierney. Did you have occasion to examine or notice his physical appearance and [TT 69] attitudes prior to the time this article was published? A. Oh, yes.

Q. What were those attitudes? A. You mean before?

Q. Yes, ma'am? A. Well, he always had a smile and spoke to everybody and was friendly with people, you know.

Q. Now, then, did you have an occasion to see him at intervals after the article was published? A. Two times afterwards, yes.

Q. What was his appearance at those times? A. Well, he just didn't act like the same man. He wasn't friendly and act like he had something on his mind.

Q. Now, then---I mean, what---what---you say act like---he was preoccupied? A. Well, he didn't---he always looked up and, hello, Mrs. Kierney, how are you today, and smile, and he seemed to not notice me after I spoke to him.

* * *

[TT 73] Q. All right; I ask you now if you can give me the name of a single voter in Citrus County who, to your knowledge, failed to vote for Mr. Damron because of this publicity? A. No.

* * *

[TT 81] Plaintiff's Witness

BETZ

Q. Didn't you take the side of Mr. Damron in this controversy that went on in Crystal River for a period of a year or more with regard to the method of financing the sewer project for the City of Crystal River? A. Mr. Damron and I were in agreement, but as far as Mr. Damron's side was concerned I had my own convictions.

Q. Well, and your own convictions happened to coincide

with his own convictions--- A. That's true.

Q. ---that's what you're saying; and you were an active participant in that fight, weren't you, Mrs. Betz? A. Yes, sir.

* * *

[TT 87] Plaintiff's Witness

EVANS

Q. Do you know his general reputation as to honesty and integrity? A. Yes, sir.

Q. Would you state that reputation? A. I would say it would be beyond reproach.

* * *

[TT 88] Q. Did you have---in your contacts with the Plaintiff did you observe his physical appearance prior to publication of this article A. Yes, sir.

Q. What was this appearance? A. Well, it was---real optimistic about everything that he was doing.

Q. What was his general mental attitude, as you observed it? A. It was good; it was good.

Q. After the publication of this article, what was his apparent mental attitude? A. Well, he came---he came to me that day or the next day and he was very upset mentally. I---

Q. In what way was he mentally upset? A. Well, he was just nervous and he---he said he just didn't---

* * *

[TT 87] A. Well, as I say, he appeared to me to be extremely nervous and upset.

Q. How long did this condition continue? A. I'd---I'd say all the way through---til after the election, and then even past then.

Q. Has it continued to a more current date? A. Well, he never has seemed the same to me.

* * *

[TT 92] Plaintiff's Witness

KENOYER

Q. Do you know Mr. Damron's reputation for honesty and integrity? A. Yes, sir.

Q. Would you please state what that is? A. Well, I found him to be very honest and willing to go out of his way to help other people. I've seen him do jobs for people and not charge them, and we've worked together on the City Council and I think he's very honest.

* * *

[TT 93] Q. Prior to the time this article was published, in your contacts with Mr. Damron what was his general appearance, physical appearance and mental attitude? A. Very good; he seemed to be getting along fine and everything was going good. I feel that there wasn't anything out of the way at all with his attitude.

Q. After the publication of this article how did Mr. Damron appear to you? A. Well, he appeared broken hearted and like he was brow-beaten because of the article. He didn't feel like he wanted---didn't have the energy and the push that he'd had before.

* * *

Q. BY MR. DUNN: Would you please state these remarks? A. I had some people come in. I can't tell you who [TT 94] they were, but the customers come in and say, well, they sure fixed him up this time putting his name in the paper when he didn't have anything to do with it, and then I had others say, goodie, they fixed---they fixed him up this time; now he's going to lose some votes. So, I---I had I don't know how many people comment on this different article, most of them feeling that he was going to lose because of the misnomer here.

* * *

[TT 99] Plaintiff's Witness

THOMPSON

Q. Immediately after the publication of this article what appearance did this Mayor have to you? A. Well, my personal opinion it had an adverse effect on him. He seemed---[TT 100] Q. In what way? A. He seemed to be concerned about this statement that happened. He was---he wasn't his old self; I can say that.

Q. When you say he wasn't his old self, would you describe to the Jury how he appeared? A. Well, he seemed to be worried and he just---he'd walk past you and not see you.

* * *

[TT 105] Plaintiff's Witness

HENLEY

A. Nothing only just regular routine, that Mr. Damron was running for the office and that---that they didn't care about voting for a man like that.

* * *

[TT 106] Q. Now, over this period of time, Mr. Henley, did you hear these comments, over a week or ten days, something like that? A. Well, it was---it was continuous; practically everywhere I'd go, down around the fish houses, and at---at the different places where I would go.

Q. And that went on, then, just about up to the time of the vote, which was about two weeks later, something [TT 107] like that? A. I would say approximately two weeks, yes, sir.

Q. Well, now, in that period didn't you also hear them commenting on the fact that the Star-Banner had first printed

a correction and retraction and then it printed a letter from Mr. Damron with an apology? A. No, sir; I did not.

* * *

[TT 109] Plaintiff's Witness

MILEY

Q. BY MR. DUNN: What were those comments or remarks? A. Well, the comments there were if---when this thing hit the headline just shortly before election, the people said, well, if he'll do that to those people what would he do to us; so, one of them, they said, well, we don't need a man like that to represent us in an office like the Tax Assessor's [TT 110] office.

Q. Was this repeated comments or just isolated comments? A. No; it was repeatedly all over the community and around, different ones that were--

Q. Do you know approximately how many voters reside in that particular community? A. We had---oh, I say we had around 375 that voted. There's more registered than that but they never---don't all vote.

* * *

Cross Examination

[TT 110] Q. BY MR. AYRES: Now, would you give us the names, please, Mr. Miley, of the people who made these comments? A. No, sir; I couldn't do that.

* * *

[TT 111] BY THE COURT: You're in a spot if you don't answer the question. A. Harry M. Yates.

Q. BY MR. AYRES: Where does he live, Mr.--- A. Hernando.

Q. All right; go ahead? A. Carroll Cultice.

Q. All right, sir; go ahead? He lives at Hernando also? A. Yes, sir; all live at Hernando.

Q. All right, sir; any others? A. Glen VanNess.
Q. All right, sir? A. And Thomas Croft.

* * *

[TT 112] Q. Over how long a period of time did you hear these discussions and comments? A. Well, it's only a matter of a couple of weeks, something like that.

Q. Between then and the time of the primary? A. From the time the paper hit the newsstand til after the first election.

Q. All right; in these same discussions did you hear any comments about the story that the Star-Banner ran correcting this error and retracting it, about their running Mr. Damron's letter and apologizing? A. Would you repeat that, sir?

Q. I say, in these same discussions didn't you hear them---also hear them commenting on the fact that the Star-Banner had printed a correction and retraction and that they had printed Mr. Damron's letter with an apology? A. No, sir.

* * *

[TT 117] Plaintiff's Witness

BYRD

Q. I'm not asking you for your opinion, Mr. Byrd, I'm asking you to state the comments that you heard after this article was published? A. That if Mr. Damron was such a man as that they didn't want him for Tax Assessor.

* * *

[TT 123] Plaintiff's Witness

GILSTRAP

A. Well, one of---one of the comments that I remember so well was that they---they didn't see how a man could run for Tax Assessor that was accused of what he was ac-

cused here in the paper.

* * *

[TT 123] Q. That's what I meant; and isn't it a fact that you heard comments back a month or six weeks before this story appeared about the fact that there had been an article about his brother, James Damron, having been accused of perjury; you heard comments about that, didn't you, Mr. Gilstrap? A. No, sir; I---I never heard any---anything, Mr. Ayres, about the Damron situation as far as what I heard going [TT 124] around over the County until this piece came out in the paper.

Q. All right; well, after it came out you heard these comments, then, on up til the time of the primary, about two weeks after the article ran, did you? A. Yes, sir.

* * *

[TT 127] Plaintiff's Witness

LAND

Q. What is your occupation? A. I'm a news reporter for the Citrus County Chronicle.

* * *

[TT 129] Q. BY MR. DUNN: Would you please state what these comments were? A. Well, they were of a general nature that he must be some kind of a nut to---if he's going to run for public office when he's under Federal indictment for perjury.

Q. Were these comments generally made or sparsely made? [TT 130] A. This news went like wildfire. I mean, it was all over the County. They were not sparsely made. It's all everybody talked about for a while.

Q. Did it seem to diminish prior to the election date, May 3rd? A. I still heard it at the rallies.

Q. Up to election? A. Yes.

* * *

[TT 132] A. I didn't read it.

Q. No; I didn't say that, but you heard the people comment on that also, didn't you, in that community? A. Yes, I did.

BY MR. AYRES: That's all.

Re-Direct Examination

Q. BY MR. DUNN: Mrs. Land, you testified that Lucy Ware told you that Fred Meier had crossed out the name James Damron in the article that she telephoned in and inserted the name Leonard Damron? A. That is what Mrs. Ware told me after---after this was published, that it was not her mistake.

Q. In the trade of news journalism, Mrs. Land, [TT 133] is this done? A. Not done that I know of. You don't change names without checking your source.

* * *

[TT 140] Plaintiff's Witness

BLAND

Q. BY MR. DUNN: Would you please read the contents of the letter, Mr. Bland? A. Dear Mr. Phillips: Once again through a careless reporting or editing you have done an irrevocable damage to a fine, honest, civic-minded citizen of Citrus County. No amount of retractions can undo the damage that you have done to Mayor Leonard Damron, his family, and his bid for election to the Tax Assessor's Office of Citrus County. You evidently [TT 141] believe in the policy of lies, misquotes, carelessness and distortion because you continue to do it. I hope your circulation increases enough to pay the damages that are bound to result from this type reporting. You may print this letter.

* * *

[TT 145] Plaintiff's Motion to Amend Complaint

BY MR. DUNN: Your Honor, this is a technical motion for purposes of avoiding any later conflict, and at this time I'd like to move on behalf of the Plaintiff that we be allowed to amend our Complaint in Paragraph Eleven to conform to the evidence as having been introduced---evidence presented here in court in this respect: Paragraph Eleven now states that because of the actions of the Defendants in publication of the aforesaid article as attached hereto as Plaintiff's Exhibit "A", the Plaintiff has suffered irreparable damages to his reputation as an individual, public officer, candidate for public office, and as a businessman. The term "as an individual", I would like to expand as to his embarrassment, mental anguish, and upset. Under the Rule, I would like to interpose this amendment at this time.

BY MR. AYRES: I think that's simply *giving* a little *law*, Your Honor. That's already covered by his allegation.

[TT 146] BY THE COURT: Well, I think it is, too, but if he wishes to amend his Complaint to that extent, the Court will grant the amendment.

* * *

[TT 148] Defendants' Reporter

WARE

BY MR. AYRES: Ladies and Gentlemen of the Jury, this is a story which appears in the Ocala Star-Banner, the issue of Sunday, January 30, 1966. It's headlined "Damron faces Federal Court Perjury Charge", by Lucy Ware, Star-Banner Staff Writer; Inglis: James Damron, local garage owner, has been released on $2,000 bond after being arrested by Federal Marshals from Gainesville. Damron was indicted by a Federal Grand Jury in Tallahassee Tuesday and charged with perjury in a 1964 civil case in federal court. The case involved

former Levy County Sheriff J. W. Turner and Deputy Sammy Cason. Mrs. [TT 149] Gail Fonley of the Issac Walton Lodge in Yankeetown alleged that Cason applied the brakes too fast, throwing her up against the case of the deputy's car, injuring her neck. The incident occurred in October of 1962. The Finley's were arrested by Cason and Deputy Walter Beckham for interfering with arrest and convicted of that charge in county court. The decision of the county court has been upheld by higher courts, including the State Supreme Court. Afterward, the Finley's charged Turner and Cason with a violation of their civil rights through mistreatment under an old, little used federal statute. Tampa Attorneys Cody Fowler and James Thompson represented the Finley's in the trial held in federal court in Gainesville. The couple first asked $75,000 in damages, but during the course of the trial raised the request to $125,000. The Finley's had become involved with Cason after Sheriff Turner received a New York warrant for the arrest of Mrs. Jean Rich Sill, who was allegedly staying at the Lodge in Yankeetown. The Finley's claimed that the deputies barged in and "battled them around" without cause. The deputies alleged the couple had been drinking and became belligerent. Damron testified that he had seen Mrs. Finley in a neck brace in late 1957 or early 1958, several years prior to the incident. But seven or eight other witnesses summoned by the plaintiff gave testimony saying Mrs. Finley had not previously worn a brace. The federal jury awarded damages totaling [TT 150] $65,000, $40,000 compensatory damages to Mrs. Finley, $20,000 to her husband, and $5,000 punitive damages to Mrs. Finley. This was later reduced to $55.000.

Damron was taken before U. S. Commissioner William Chandler in Gainesville Thursday following his arrest. Bond was set at $2,000. Trial has been scheduled for federal court in April. Now Mrs. Ware, I show you another page from another edition of the Ocala Star-Banner, being Page Nine

of the edition of Monday, April the 18th, and ask you to examine that page and state whether you wrote any of the stories appearing thereon? A. Yes, sir; three of them.

Q. In particular, I direct your attention to a story appearing in the lower right hand portion of the paper reading: "Damron Case Passed Over To Next U. S. Court Term", and ask you whether you wrote that story? A. Yes, sir.

Q. This has been received in evidence as Defendants' Exhibit---Plaintiff's Exhibit Three. Now, what procedure do you follow in writing a story and transmitting it to the Star-Banner, Mrs. Ware? A. Well, I use one of two procedures. If the story is not of particular news interest, I generally type it and mail it in since the mail service is one day. If the story is of particular news value, I phone it in early in the mornings.

* * *

[TT 151] Q. All right; now, what procedure did you follow in transmitting this particular story, "Damron Case passed Over to Next U. S. Court Term"; what procedure did you follow in transmitting that story to the Star-Banner for Publication? A. I typed it first at home and read it over the phone the following morning, that same morning to Mr. Meier.

* * *

[TT 152] Q. And what is this---what is this story? A. The story is essentially the one that was called in, the only change being that the city was changed. When I phoned in that morning, I had a Gainesville dateline which was where the action had occurred, and I was informed that our Editor had given instructions that any story appearing on this page, which was an area page, should have---and coming out of the area concerning area people should have the dateline of the city that the people were concerned with because people read datelines rather than the text of a story.

* * *

[TT 152] Q. Who did you telephone it to? A. Fred Meier, who was area editor.

Q. And how long had Mr. Meier been operating in that capacity, to your knowledge? [TT 153] A. About a month, possibly a few days longer, but not very long.

Q. He was new at the job, then? A. Yes, sir.

Q. All right; and this is the original that you typed that you called in? A. Yes, sir.

BY MR. AYRES: We offer this in evidence as Plaintiff's ---Defendants' Exhibit Two.

BY MR. DUNN: Your Honor, we object to the admission of this into evidence on the grounds it's merely a self-serving declaration on the part of this witness. The evidence---the paper itself speaks for itself.

BY THE COURT: Objection is overruled. The document is admitted into evidence.

BY THE CLERK OF THE COURT: Defendants' Exhibit Number Two.

BY MR. AYRES: Ladies and Gentlemen of the Jury, this document has been admitted in evidence as Defendants' Exhibit Two. You'll have ample opportunity when you retire to the juryroom---you'll be given all the exhibits. You'll have an opportunity to read this, so I won't take your time now by doing so. I simply call your attention to the fact that the dateline is Gainesville and read---the opening paragraph read: "Inglis garage owner James Damron pled not guilty to Federal [TT 154] charges of perjury", and goes on then. That's the tentative head. Then, the story begins: "Gainesville – A case charging Inglis garage owner James Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge G. Harrold Carswell." Now, Mrs. Ware, did you see the---this story which has been marked---received in evidence---it's before you; I beg your pardon. Did you see this story as it actually appeared in the page of the paper which has been

received into evidence as Defendant's Exhibit Three the Damron Case Passed Over story? A. Yes, sir.

Q. Did you---anything strike you about that story when you read it? A. Yes, sir; I was in Bronson, had been covering a meeting there and picked up the paper in the drug store there when I went to eat a sandwich.

Q. When was this? A. This was on the day that it was---came out, Monday, April the 18th; that afternoon, late.

Q. When did you phone the story in? A. That morning about six or seven a.m.

Q. Early in the morning? A. Yes, sir.

Q. You saw this---this paper, then, as it actually ran that afternoon in Bronson?

* * *

[TT 155] Q. All right; what did you notice about the story, if anything? A. The one thing that I noticed about the whole page was that word "Leonard" had been inserted in the place where I had read "James".

Q. What did you do, if anything? A. I called Fred Meier at home from the drug store in Bronson and asked him what had happened and told him that---to be sure that a correction ran the next day. It upset me a good deal to see that the mistake had been made.

Q. All right; now, was a correction run the next day? A. Yes, sir.

* * *

[TT 160] A. Actually, I think there was a time when he was working in both, but I'm--- I'm not sure. He---he---the---the information that I went by in basing him in Inglis was the F. B. I.'s information. I assumed they knew what they were doing.

Q. But it is your testimony that you did not check the fact yourself; is this correct? A. No, sir; I don't suppose I did. I knew that he still owned the Inglis garage, that he

was at times working days in Crystal River and nights in Inglis.

Q. But you didn't check the fact? A. No, sir; I trust the F. B. I.'s information.

* * *

[TT 162] Defendants' Area Editor

MEIER

Q. Did you have any connection with the publication of that story in the Ocala Star-Banner? A. Yes.

Q. And what----how did you participate in connection with it? A. I took it over the phone from Lucy Ware, basically. I do edit as I go along on the phone and make inserts and delate words that I feel are not appropriate to the story.

Q. Well, is this substantially in the form in which she phoned it in? A. Yes, except for one word.

Q. What is that one word? A. Leonard.

Q. Now, to the best of your recollection now, what word did she actually use when she called in, Mr. Meier? A. All---the only word I caught was "Damron" and automatically I put "Leonard" down.

Q. Why did you do that? A. He was the only Damron I knew. It was probably a mental aberration. I just assumed it was Leonard Damron. I didn't hear "Leonard" on the phone; I can't swear that I did. I just heard the word "Damron".

Q. And you just---and had you had occasion to---in the past prior to that---before that date to handle any other stories about Leonard Damron? A. Yes.

Q. And in his capacity as Mayor of Crystal River? A. Yes.

[TT 164] Q. ---in connection with the sewer bond controversy over there and financing? A. Yes.

Q. Had you had more than one story about him? A. Yes.

Q. Had you had many stories? A. Quite a few.

Q. And this is the only first name that you recognized in connection with the word---the name "Damron"? A. Yes.

Q. Now, following the publication of that story, did Mrs. Ware contact you? A. Yes.

Q. And what did she tell you, if anything? A. She told me I had the wrong first name. It was James Damron, not Leonard Damron.

Q. Did you take any action as a result of that call from her? A. I immediately wrote and published a correction.

* * *

[TT 166] Q. Well, tell me, Mr. Meier, having written so many stories about Mr. Leonard Damron, weren't you aware that Mr. Damron was in Crystal River, Florida? A. Yes.

Q. Mr. Meier, will you look at the dateline on the story which was published in error and answer me, what is the dateline on that particular story? A. Inglis.

Q. You had a mental aberration? A. Yes.

Q. A man that you had been writing stories about in Crystal River, Florida, and you suddenly get a story about him in Inglis, Florida, and you make this change without checking? A. It so happened I did.

Q. Thirty-seven years in the newspaper business? A. Uh, huh.

* * *

[TT 171] Q. At the time that this story appeared, Mr. Meier, did you know Mr. Leonard Damron personally? A. No.

Q. Did you have occasion to meet him later? A. Yes.

Q. Where? A. At a political rally in Citrus High School field.

* * *

[TT 207] Defendants' Witness

HOOD

Q. What---how did you happen to become acquainted with him in your capacity as Deputy Clerk, Mrs. Hood? A. Well, he was Mayor.

Q. And as a result of his official position and your official position, did you have occasion to see him [TT 208] frequently? A. Yes, sir.

Q. Did you see him frequently during the Spring of the year 1966, two years ago, when Mr. Damron was a candidate for Tax Assessor, or the nomination as Tax Assessor of Citrus County, Florida? A. Yes.

* * *

[TT 211] Q. BY MR. DUNN: Mrs. Hood, after this article of April 18, 1966, in which we're referring to, Damron's Case Passed Over to Next Term of Court, is it your testimony that after this article was published in the Crystal River area that Mr. Damron did not in any way appear concerned about that article? A. Yes, I think he appeared concerned about the article.

Q. Will you state to the Jury how he appeared concerned about the article? A. It worried him that this came out in the paper.

BY MR. DUNN: Thank you. I have no further questions.

* * *

[TT 214] Defendants' Witness

JONES

Q. How long have you been a member of City Council of the City of Crystal River, approximately? A. Going on six years.

Q. During that period of time and before that have you had occasion to become acquainted with Mr. Leonard Dam-

ron? A. Yes, sir.

Q. Did you know Mr. Damron during the Spring of 1966, two years ago, when he was a candidate for nomination to the office of Tax Assessor in the Democratic Primary on May 3rd, 1966?

* * *

[TT 218] Q. Isn't it true, Mr. Jones, that you and Mr. Damron have been at odds many times on issues in City government? A. That's right; yes, sir.

* * *

[TT 220] Defendant's Witness

ALLEN

Q. And do you remember, Mrs. Allen, the Democratic Primary election on May 3rd, 1966, at which time Mr. Damron was a candidate for nomination for the Office of Tax Assessor; you remember that election two years ago? A. Yes, sir.

Q. Did you have occasion to see Mr. Damron from time to time during the campaign that led up to that election beginning in January and February and ending on May the 3rd? A. Occasionally I saw him, yes, sir.

* * *

[TT 228] Defendants' Witness

WILLIAMS

Q. BY MR. AYRES: Now, Mr. Williams, you stated that you saw Mr. Damron frequently. Did you see him on more than one occasion between April 18th when this offending article appeared and May 3rd, the date of the Primary, some fifteen days later? A. Yes, sir; I think I had.

Q. All right; now, did you observe any difference in his appearance or demeanor or actions as you saw him in that

period as contrasted with his appearance and actions before that date? A. No, sir; I couldn't tell any difference in him.

* * *

[TT 233] Defendants' Witness

OLIPHANT

Q. All right, sir; now, do you remember that on April 18th, 1966, two years ago this Spring, at a time that Mr. Damron was a candidate for Tax Assessor of Citrus County, Florida, in the Democratic Primary on May 3rd; you remember that campaign? A. Yes, sir.

Q. Do you remember that Mr. Damron was a candidate? A. Yes, sir.

* * *

[TT 238] Q. Did you ever hear any comments to the effect or in substance that it would hurt his candidacy or his chances of election. A. No, I didn't.

* * *

[TT 240] Defendants' Witness

ROCKS

Q. Do you hold any official position in Citrus County? A. County Commissioner.

* * *

[TT 243] A. Well, the general substance of it, of course, that they knew the difference between Mr. Damron---Jim Damron and Mr. Leonard Damron and there was no---there was no thought [TT 244] as far as any damage between the brothers, that they knew it was Jim Damron that they were speaking of.

Q. Did you ever hear any comment to the effect that the publication of this article containing the mistake in the name

was injuring or damaging his candidacy in any way? A. No, sir.

Q. You never did? A. Not the first time.

* * *

[TT 253] Defendants' Witness

WHITNER

Q. BY MR. DUNN: Mr. Whitner, you testified, I believe, that you saw Mr. Damron quite regularly, more especially during the campaign period of April 18, 1963, to May 3rd of '63? A. Yes, sir.

* * *

[TT 258] Defendants' Witness

TOLLE

Q. After that article appeared, as you went about campaigning and working in the Tax Assessor's Office and attending these rallies, Mr. Tolle, did you hear general comment and discussion of Mr. Damron's candidacy and of this article---just general conversation that you overheard, comments by the voters of Citrus? A. Of his candidacy, yes, sir; there was discussion---

* * *

[TT 274] *Directed Verdict for Plaintiff on Liability*

BY THE COURT: Well, I think liability as to compensatory damages is admitted in this case.

* * *

[TT 276] BY MR. DUNN: The point I'm getting at, Your Honor, I don't think it's in the province of the Jury in this case to determine whether or not the question of liability of the Defendant. As you've already stated, it is the issue of damages,

both compensatory as well as punitive.

BY THE COURT: The publication of the article is libellous per se---

BY MR. DUNN: Yes, sir.

BY THE COURT: Whether or not the Plaintiff suffered any damage by reason of the publication is the only issue for the Jury to decide.

BY MR. DUNN: Yes, sir.

BY THE COURT: And I grant your motion to that extent.

* * *

[TT 277] BY THE COURT: That's right, and whether or not the Plaintiff suffered any damage by reason of it is a matter for them to decide.

BY MR. AYRES: And, in other words, I---I don't take it that your ruling comprehends an instruction by you to the Jury that they must return a verdict for the Plaintiff because of the publication standing alone without more.

BY THE COURT: No; they've still go to decide what damage he suffered.

BY MR. AYRES: Yes, sir. You all meet me in the office shortly and we'll settle the instructions.

* * *

[TT 301] This is a suit for damages filed by Leonard Damron, the Plaintiff, against the Ocala Star-Banner Company, and Loyal Phillips, the Defendants, because of a certain defamatory article published about him. The Court instructs you that the printing of any expression that brings a man into contempt or ridicule or tends to degrade him in the estimation of society is a libel, as in this case where the imputation of a felony, perjury, was allegedly made, and if you believe from the evidence that such an imputation of a felony, perjury, was made about the Plaintiff and published by the Defendants, then the Defendants are guilty of a libel. The

Court instructs the Jury that you need not consider whether a libel has been committed and instructs you that there must be a finding in favor of the Plaintiff in accordance with the other instructions given you by the Court.

* * *

[TT 303] You are instructed that in this case the charge made against the Plaintiff was libelous, per se, and that it created a presumption of damage to the Plaintiff but that if this presumption of damage is overcome [TT 304] by evidence offered by the parties and there is no proof of general damage to the Plaintiff by a preponderance of the evidence, then you cannot award anything more than nominal damages to the Plaintiff. The Court instructs the Jury that if you believe from the evidence and by the instructions of the Court that the Plaintiff is entitled to recover from the Defendants, then in addition to any compensatory damages, if any, that he may have---may recover, you may, as hereinafter stated, award the Plaintiff punitive damages when malice is shown or implied. The Court instructs the Jury that punitive damages are awarded as a pecuniary punishment to the Defendants and a deterrent to others, and you may take into consideration the financial status of the Defendants to the---to determine the extent of the punishment. The Court instructs the Jury that in your consideration of damages that may be awarded to the Plaintiff, you may do so in accordance with the following: First; as to compensatory or actual damages you may award a sum that will fully and adequately compensate the Plaintiff for his mental suffering, embarrassment and injury to his reputation as a citizen and public official, and any other damage that would naturally flow from being falsely accused of a felony. Two; as to exemplary or punitive damages, you may award a sum that will serve as a pecuniary punishment to the Defendants, taking into consideration their financial status and also as a deterrent to others. The

Court instructs the Jury that malice [TT 305] may be implied or inferred where the charge of a felony is imputed to the Plaintiff. In other words, if you are reasonably satisfied from the evidence that the Defendants imputed the charge of perjury to the Plaintiff, of which he was not guilty, then you may infer that it was maliciously made and it is not necessary to prove any express malice or ill-will in order to warrant a verdict for punitive damages in favor of the Plaintiff.

* * *

Monday, April 18, 1966 Ocala Star-Banner

Damron Case Passed Over To Next U.S. Court Term

INGLIS — A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harold Carswell in Gainesville.

Damron was indicted by a Federal grand jury in Tallahassee last January and charged with perjury in a 1964 civil case which esulted in damages of $65,000 being awarded to a Yankeetown couple.

Mrs. Gail Finley alleged that Levy County Deputy Sammy Cason slammed on brakes causing her to injure her neck in October of 1962.

Cason and Deputy Walter Beckham went to Yankeetown with a warrant for the arrest of Mrs. Jean Rich Sill, who was allegedly in the Izaac Walton Lodge.

According to officials, the Finleys interfered with the officers, were arrested and charged with interfering with arrest.

A conviction obtained in County Court has been upheld through appeals by the Florida State Supreme Court.

The civil suit which followed was filed under an old, little-used federal statute in which the Finleys charged former sheriff J. W. Turner and Ca with a violaton of their c rights.

Damron testified that he h seen Mrs. Finley in a n brace in late 1957 or early 19 several years prior to the in dent, but numerous other w nesses, summoned by the pla tiff, gave testimony, saying t Mrs. finley had not previou worn a brace.

Damron was released $2,000 bond, following his ar by federal marshals Jan. 27.

Plaintiff's Exhibit 3

So Sorry

Editor, Star-Banner:

Once again through careless reporting or editing you have done an irrevocable damage to a fine, honest, civic minded citizen of Citrus County.

No amount of retracting can undo the damage that you have done to Mayor Leonard Damron, his family and his bid for election to the tax assessor's office of Citrus County.

You evidently believe in the policy of lies, misquotes, carelessness and distortion because you continue to do it.

I hope your circulation increases enough to pay for the damages that are bound to result from this type reporting. You may print this letter.

Glenn A. Bland

Defendants' Exhibit 4

Damron Faces Federal Court Perjury Charge

By LUCY WARE
Star-Banner Staff Writer

INGLIS — James Damron, local garage owner, has been released on $2,000 bond after being arrested by federal marshals from Gainesville.

Damron was indicted by a federal grand jury in Tallahassee Tuesday and charged with perjury in a 1964 civil case in federal court. The case involved former Levy County Sheriff J. W. Turner and Deputy Sammy Cason.

Mrs. Gail Finley of the Issac Walton Lodge in Yankeetown alleged that Cason applied the brakes too fast throwing her up against the case of the deputy's car, injuring her neck. The incident occurred in October of 1962.

The Finleys were arrested by Cason and Deputy Walter Beckham for interfering with arrest and convicted of that charge in county court.

The decision of the county court has been upheld by higher courts, including the State Supreme Court.

Afterward the Finleys charged Turner and Cason with a violation of their civil rights through mistreatment under an old, little used, federal statute.

Tampas Attorneys Cody Fowler and James Thompson represented the Finleys in the trial held in federal court in Gainesville.

The couple first asked $75,000 in damages, but during the course of the trial raised the request to $125,000.

Defendants' Exhibit 1

The Finleys had become involved with Cason after Sheriff Turner received a New York warrant for the arrest of Mrs. Jean Rich Sill, who was allegedly staying at the lodge in Yankeetown.

The Finleys claimed that the deputies barged in and "batted them around" without cause. The deputies alleged the couple had been drinking and became belligerent.

FILED
MAR 30 1970
JOHN F. DAVIS, CLERK

No. 118

In the Supreme Court of the United States

OCTOBER TERM, 1969

OCALA STAR-BANNER COMPANY,
a corporation, and LOYAL PHILLIPS,

Petitioners,

vs.

LEONARD DAMRON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

HAROLD B. WAHL,
Loftin and Wahl,
414 Florida Title Building,
Jacksonville, Florida 32202,

Attorneys for Petitioners.

March, 1970.

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No.

In the Supreme Court of the United States

OCTOBER TERM, 1969

OCALA STAR-BANNER COMPANY,
a corporation, and LOYAL PHILLIPS,

Petitioners,

vs.

LEONARD DAMRON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

Petitioners, Ocala Star-Banner Company, a corporation, and Loyal Phillips, pray that a Writ of Certiorari be issued to review the judgment of the District Court of Appeal, First District, State of Florida, entered in the above-entitled case.

OPINIONS BELOW

The opinion of the District Court of Appeal, First District, State of Florida, is reported at 221 So.2d. 459 (Appendix "A"). The opinion of the Florida Supreme Court refusing to review said decision (SC #8)[1] is not yet reported. It is attached as Appendix "C".

JURISDICTION

The judgment of the District Court of Appeal, First District, State of Florida (Appendix "A"), sought to be reviewed here, dated and entered on April 22, 1969 (DC #1) is reported at 221 So.2d. 459. The judgment was made final by an Order of the Supreme Court of Florida dated and entered February 20, 1970 (Appendix "D", SC #11) refusing to rehear its Order-Opinion of January 21, 1970 (Appendix "C", SC #8) dismissing the case for alleged lack of jurisdiction. The Florida Supreme Court had first, in July, 1969, *denied* motion to dismiss the appeal for want of jurisdiction (Appendix "B", SC #7) and set the case down for oral argument on the merits.

Under these circumstances, the Writ of Certiorari runs to the District Court of Appeal, First District, State of Florida. See *Missouri K. & T. R. Co. v. Elliott* (1902) 184 U.S. 530; *Sullivan v. Texas* (1908) 207 U.S. 416; *Cuyahoga R. P. Co. v. Northern Realty Co.* (1917) 244 U.S. 300; *Randall v. Board of Commissioners* (1923) 261 U.S. 252; *American Railway Express Co. v. Levee* (1923) 263 U.S. 19; *Adam v. Saenger* (1938) 303 U.S. 59; *Callender v. United States*(1965) 380

NOTE 1: We refer to Trial Clerk's certified record (Volume I) as "R"; to the Court Reporter's separate volumes of trial transcript (Volumes II and III) as "TT"; to the record volume in the District Court of Appeal (Volume VI) as "DC"; and to the volume covering the record in the Florida Supreme Court (Items 6-15) as "SC".

U.S. 519, 383 U.S. 270; *Beckley v. Hanks* (1967) 389 U.S. 81; and *Stern & Gressman*, Supreme Court Practice, page 113, Fourth Edition; page 88, Third Edition; and page 79, Second Edition.

It was necessary to first seek review by the Florida Supreme Court[2] before filing Petition for Certiorari in this Court. See *Banks v. California* (1969) 395 U.S. 708.

NOTE 2: Article V, Section 4(2), of the Florida Constitution provides:

"Appeals from District Courts of Appeal may be taken to the Supreme Court, as a matter of right, only from decisions initially passing upon the validity of a state statute or a federal statute or treaty, or initially *construing a controlling provision of the Florida or Federal constitution.* The Supreme Court may review by certiorari any decision of a District Court of Appeal that affects a class of constitutional or state officers, or that passes upon a question certified by the District Court of Appeal to be of great public interest, or that is in *direct conflict* with a decision of another District Court of Appeal or of the Supreme Court on the same point of law, and may issue writs of certiorari to commissions established by law."

Florida Statutes Section 59.45 provides:

"59.45. Misconception of remedy; supreme court. - If an appeal be improvidently taken where the remedy might have been more properly sought by certiorari, this alone shall not be a ground for dismissal; but the notice of appeal and the record thereon shall be regarded and acted on as a petition for certiorari duly presented to the Supreme Court."

By Petition for Rehearing (SC #9) and earlier brief and argument, it was pointed out to the Florida Supreme Court that in addition to the erroneous ruling by the District Court of Appeal on the Constitutional question, reviewable on appeal, the ruling here is further reviewable on "conflict" certiorari. It is squarely contrary to the decision of the Florida Fourth District Court of Appeal in *Urchisin v. Hauser* (1969) 221 So.2d. 752. In the *Urchisin* case, the Federal doctrine was correctly held to be applicable to "Non-governmental issues and non-governmental persons". The opinion here is also contrary to the decision in *Maloney v. Gibson and St. Joseph Telephone Company*, that plaintiff must prove express malice, handed down January 28, 1970, Case No. 39914, ____ So.2d. ____, and the Florida Chief Justice would have granted review on that ground. (SC #9)

Accordingly, in the Petition for Rehearing, it was again prayed that the Florida Supreme Court review either on appeal or by certiorari (SC #9).

As indicated, the Florida Supreme Court first ruled it had jurisdiction, and denied motion to dismiss the appeal (Appendix "B"). Many months later, it reversed itself (Appendix "C"). Then, despite Petition for Rehearing (setting up both the Constitutional appeal and

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257. The judgment of the Florida District Court of Appeal violates the rights of petitioners guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

QUESTIONS PRESENTED

1. Does a libel judgment against newspaper Petitioners in favor of Respondent Mayor and candidate for County Tax Assessor (primarily covering damages for loss of election) deprive Petitioners of their Constitutional rights where the record contains no evidence of (or even consideration given to necessity for) actual malice as defined by this Court?

2. Does the State Court's instruction to a jury (affirmed by the District Court of Appeal) that it must return a libel verdict against Petitioners in favor of Respondent Mayor and candidate for County Tax Assessor without any regard for actual malice, as defined by this Court, deprive Petitioners of their Constitutional rights?

---

the discretionary "conflict" certiorari grounds for review), the Supreme Court of Florida denied the Petition for Rehearing (Appendix "D") and refused to take jurisdiction.

Accordingly, Petitioners here have exhausted their remedies for review in the Courts of Florida and their only recourse now is in the Supreme Court of the United States.

As stated in *Evans v. Abney*, ____ U.S. ____, 24 L.Ed.2d. 634,643 (January 26, 1970):

"No state law or act can prevail in the face of contrary federal law, and the federal courts must search out the fact and truth of any proceeding or transaction to determine if the Constitution has been violated."

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States

Amendment I:

"Congress shall make no law . . . . . abridging the freedom of speech or of the press . . . . . "

Amendment XIV:

". . . (N)or shall any State deprive any person of life, liberty,or property, without due process of law . . . . . "

STATEMENT OF THE CASE

Respondent (plaintiff) Leonard Damron, for many years Mayor of the Town of Crystal River, Florida, and, at the time of the alleged libel, candidate for County Tax Assessor of Citrus County, Florida, brought suit for libel (Appendix F) against newspaper Petitioners (defendants). The trial court, without giving any consideration to the question of express malice, *directed* a verdict for Respondent (plaintiff) and the jury brought in a verdict for $22,000.00. The judgment against Petitioners is in clear violation of the letter and spirit of *New York Times v. Sullivan* (1964) 376 U.S. 254, and succeeding cases. Not only is the record devoid of evidence of actual malice, but the court directed a verdict for Respondent on liability without regard to the question of actual malice.

Libel Complained Of

The complained-of story published in the Ocala Star-Banner, as alleged in paragraph 3 of Respondent's complaint (Appendix F), was:

"A case charging local garage owner *Leonard Damron with perjury*[3] was passed over for the present term of

---

NOTE 3: Emphasis here and elsewhere added by counsel unless otherwise indicated. Respondent emphasizes that he was not called a "public figure" or "public official". But in his complaint (Appendix F) he specifically alleged the public figure capacity and that he lost the election because of it. Meier, the area editor, infra, thought it was the public figure and that is the reason he used Leonard's name.

Federal court after Damron entered a guilty plea before Judge Harrold Carswell in Gainesville ..... ". (R. 1, 2 – See page A-12 infra for complete story).

Respondent Alleged Public Figure Damages

Respondent alleged in paragraphs 6, 9, 10 and 11 of his complaint (R. 2, 3 - Appendix F hereto) on which he went to trial, that he was a *public figure and sustained damages in that capacity* as follows:

"6. That the Plaintiff is and was on April 18, 1966, a public officer, being elected to the office of Mayor of Crystal River, Citrus County, Florida, and on said date was a candidate for the office of Tax Assessor for Citrus County, Florida, and was and is a businessman in said Town and County, owning and operating a garage. The plaintiff, Leonard Damron, is the only garage owner by the name of Leonard Damron doing business in the Marion, Citrus, Levy and Sumter County area."

* * * * *

"9. That the aforesaid article published on April 18, 1966, by the Defendants, set forth as Plaintiff's Exhibit "A", was published at a time and in a newspaper in general circulation in an area where voters who would cast their votes in a democratic primary on May 3, 1966, in which primary the Plaintiff was a candidate for the office of Tax Assessor of Citrus County, Florida, opposing two other candidates. That throughout the remainder of the political campaign, from April 18, 1966, the Plaintiff was repeatedly required to answer questions regarding the charges against him of perjury purportedly pending, and that although the Plaintiff fervently denied such charges and endeavored to make

it known that the statements printed in said article were false, he has been unable to remove the damage to his reputation caused by said article."

"10. That the Plaintiff continues to hold the office of Mayor of the Town of Crystal River, Citrus County, Florida, having been duly elected to said office prior to the publication of the said article attached hereto as Plaintiff's Exhibit "A", and Plaintiff desires to continue to hold this office for which he will be required to campaign and run for re-election in December of 1966, and overcome the false and defamatory statements in said article that Defendants have caused to be published, which continues to create doubt and suspicion in the mind of the people of Citrus County, Florida, as to the integrity of the Plaintiff."

"11. Because of the actions of the Defendants in the publication of the aforesaid article as attached hereto as Plaintiff's Exhibit "A", the plaintiff has suffered irreparable damages to his reputation, as an individual, public officer, candidate for public office and as a businessman." * * * * *

Thus, Respondent expressly alleged his case to come within the purview of the Federal Constitutional Law of Libel, a factor not considered in the District Court opinion. Respondent made his own bed and must lie in it. His own complaint shows the public interest.

Petitioners moved to *dismiss* the complaint since it failed to allege that the publication of the article was made "maliciously" and also failed to allege "wantonness, recklessness or carelessness". (R. 7).

Petitioners further moved to *strike* the first two clauses of

the first sentence of paragraph 6, and also paragraphs 9 and 10, all quoted above, and claiming *"public figure"* damages. (R. 8)

Petitioners further moved to strike the portion of paragraph 11 "alleging damages to plaintiff's reputation either as a *public officer or as a candidate for public office.*" (R. 8)

All of Petitioners' above motions were denied. (R. 9)

Answer was filed denying the material allegations (R. 10, 12) and the case went to trial. At the trial, the jury was given no instructions on "express malice". Instead, it was instructed that since the publication charged the crime of perjury, this was libel per se, malice was imputed or presumed, no proof of malice was required, and the only question was the amount of damages (TT. 301, 303, 305, 306, 307), including damage to Respondent as a "public official". (TT. 304) Attached as Appendix "E" are pertinent portions of the Court's instructions to the jury. As stated in the District Court opinion (Appendix A) "a *directed verdict* on the question of liability was granted."

The jury failed to find punitive damages. It did bring in a verdict for $22,000.00 compensatory damages. (R. 18, 19)

Motion for new trial was filed emphasizing that the evidence was insufficient to satisfy the Constitutional rule. (R. 20, 21)

The Court denied the motion (R. 22, 23), the District Court of Appeal affirmed, and the Florida Supreme Court, after briefs and oral argument, dismissed appeal for alleged want of jurisdiction (Appendix C) after it had *first* held it did have jurisdiction and had denied motion to dismiss appeal for want of jurisdiction. (Appendix B)

The District Court opinion (Appendix A) erroneously construed the First Amendment as not requiring proof *or* allegation of "express malice" in the case of public figure Damron so suing for public figure damages. It erroneously construed the First Amendment as follows:

> ". . . . . Our impression is that it is the public officer's *official conduct* or the manner in which he performs his duties that affords the media a wide latitude for comment. It is the plaintiff officer's *performance of duty* that is so affected by the public interest which justifies the protection from libel actions afforded by the *New York Times* doctrine in the absence of proof of malice. . . . . The plaintiff's official conduct or the manner in which he performed his duties were not the basis for the inaccuracy here involved; and hence, it does not come within the protection afforded by the rule announced in the *New York Times* case. It follows, therefore, that the trial judge correctly held that it was unnecessary for the plaintiff to show malice." (Appendix A)

It is this dangerous, utterly erroneous, and completely misleading language that will cause the Federal Constitutional Law of Libel to be almost meaningless in Florida (and particularly in the First District) until this opinion is reversed and comes out of the case books.

This decision is even more dangerous and misleading than those in *Roy v. Monitor - Patriot* (N.H. 1969) 254 A.2d 832, certiorari granted February 24, 1970, Case #891; and *Greenbelt* v. *Bresler* (Md. 1969) 254 A.2d 755, certiorari granted and the case now awaiting decision by this Court after oral argument, Case #413.

Evidence at the Trial

There was no dispute but that the Petitioners erroneously published that Respondent had been indicted for perjury rather than his brother, James Damron (who was running Respondent's business while Respondent campaigned - TT. 33)

On April 18, 1966, Petitioners' Area Reporter Ware telephoned in a story with respect to a Damron being charged with perjury in Federal Court in a civil rights case, a matter of public interest (TT. 163)(R. 6). The story was telephoned in to Petitioners' Area Editor Meier who had only been in the Ocala area for a few days over a month (TT. 153), and who did not know Damron except by his reputation as a public figure (TT. 171). Damron was so much in the public eye that numerous stories had been in the paper about him, handled by Meier (TT. 164). Although the reporter says she telephoned in the correct name, Meier thought they were talking about Respondent, the public figure, about whom he had published so many prior stories. Accordingly, he automatically wrote down and used in the story the name of Leonard Damron rather than the name of Respondent's brother, James Damron (TT. 163).

It being conceded that Petitioners had published the story and made the error (albeit an innocent one, free of malice), Respondent based his case almost entirely on his *public figure* damage.

At TT. 9, Respondent testified:

> "I have been Mayor for four terms ---- well, I kept a scrap book (Ocala Star-Banner articles) and to where I could always refer back to my activities as Mayor and all the other civic organizations I belong to."

At TT. 12, he said:

> "I felt like it (the publication) had ruined me – I was running for Tax Assessor at that time and I had already covered probably two-thirds of the county from door to door, with political speeches, and running ads in the newspapers and I was so upset – I called you (plaintiff's attorney) and asked for your advice – and wrote the Ocala Star-Banner a letter - "

At TT. 13, Respondent read to the jury *his* published letter to the Ocala Star-Banner,[4] from which we quote:

> "You are advised that the undersigned Leonard Damron has never been charged with the crime of perjury, is presently Mayor of the Town of Crystal River, and is presently a candidate for Tax Assessor of Citrus County, Florida."

At TT. 192, Respondent's counsel had another witness again read to the jury his exact above letter as to his public figure status.

We further quote from the trial transcript:

> "Q. Immediately after the publication of this article, what was the reaction of people to you from whom you would *solicit votes*?
>
> A. Very cold." (TT. 24)

* * * * *

NOTE 4: Petitioners not only published Respondent's letter (TT. 192) but upon the error being discovered, they had previously on their own volition run a correction and retraction the day after the error appeared (TT. 155-6). As stated by Petitioner Publisher: "We ran three corrections on two different days." (TT. 194). In interrogating the Publisher before the jury, Respondent's counsel once again emphasized that Petitioners *knew* that, and Respondent *was*, "a public office holder" and "*was also* a candidate for Tax Assessor of Citrus County, Florida" (TT. 193).

"Q. Were you able to overcome the effect of this publication on your candidacy as Tax Assessor?

A. No, sir.

Q. What was the result of the election?

A. I got beat." (TT. 24, 25)

* * * * *

"Q. Now, then, Mr. Damron, as to the office of Tax Assessor for which you were running, do you know what the annual compensation is in that office?

A. $9,000.00 a year." (TT. 28)

"Q. After this publication of the article, did you run again for the office of Mayor of Crystal River?

A. Yes, sir." (TT. 26)

* * * * *

"Q. What, if any, voter opposition did you meet in campaigning for this office in the year 1966 that you did not meet in prior years?

A. The vote was ..... the public was a little cooler ..... they wasn't as friendly ....." (TT. 27)

Respondent testified he was *defeated for Mayor* by 28 votes the last time (TT. 50, 26)

Respondent's twelve witnesses repeatedly testified on the alleged bad effect Petitioners' publication had on the voting public and Respondent's chances for election. (TT. 66, 68, 94, 105, 109, 117, 123, 129, 140). Not one of them testified to

(a) any express malice, or (b) any monetary damage other than *loss of public office and campaign contributions.* (TT. 68).

As indicated, Respondent's complaint did not allege that Petitioners published the statement about Respondent with actual malice as defined by this Court. For this reason, Petitioners moved to dismiss the complaint and to strike allegations as to public figure damages therefrom, prior to trial. The trial record does not contain a scintilla of evidence that Petitioner's story was written with actual malice as defined by the Court. Far from proof of "convincing clarity", there was no evidence at all of express malice. Nonetheless, the Court directed a verdict for the Respondent on the erroneous assumption that a charge of perjury "was libelous per se" (TT. 303), there "must be a finding in favor of plaintiff" (TT. 301), and that Respondent was entitled to compensation for "injury to his reputation as a citizen and public official". (TT. 304)

REASONS FOR GRANTING WRIT

The opinion of the District Court of Appeal (Appendix A) is a flat repudiation of the rulings of this Court.

The ruling of the Florida Court applies the Federal Constitutional Law of Libel *not* to public figures, candidates, and matters of public interest, as held by this Court. Instead, it limits the doctrine to Respondent's "*official* conduct or the manner in which he performed his *duties*".

Even Respondent's own counsel finally recognized that this was erroneous, and we quote from page 17 of Respondent's brief before the Supreme Court of Florida:

"This decision [Time v. Hill (1967) 385 U.S. 374]

> clearly shows that the United States Supreme Court is granting a privilege under the First Amendment to the United States Constitution when the article is directed to official conduct, official duties, public issues, matters of public interest, and public affairs."

The trial court directed a verdict on the ground that the *New York Times* doctrine had no application here since the story did not *specifically* refer to Respondent as a *public official* or to his *official conduct.* (Appendix E) The Florida Court utterly ignored in this case that the Constitutional protection goes much beyond official conduct and performance of official duties, and extends to matters of public interest. Especially is this true when Respondent's entire case is bottomed on the damage that he sustained when he was defeated for election as County Tax Assessor and was later defeated for re-election as Mayor.

Newly-arrived Area Editor Meier thought it was the public figure involved in the indictment for perjury, and he wrote the story about the public figure. Respondent said that the public applied the story to Respondent in his public figure capacity and that is the reason he lost the votes in the election.

It was stated by counsel for both sides in oral argument before the Supreme Court of Florida that they understood the $22,000.00 verdict was made up of two years' salary as County Tax Assessor at $9,000.00 per year, plus $4,000.00.

Petitioners were deprived of their Constitutional rights because the Florida Courts limited the Constitutional rule to *official conduct* of a *public official.*

Respondent cannot have his cake and eat it, too. He cannot recover public figure damages without being subject to the *New York Times* rule of public figure damages. The rule applies to matters of public interest.

Respondent's Argument

Respondent argues that the story did not in so many words refer to Respondent as "Mayor" or as "candidate for County Tax Assessor, or as "a public figure". The District Court opinion (Appendix A) emphasized this.

It is apparently Respondent's theory that a story charging "President Richard Nixon" with perjury comes under the Federal rule. But the same story charging only "Richard Nixon" does not, even though "public figure" damages are specifically sought.

Suppose Respondent had been referred to as "Mayor". Could he still recover damages as a candidate for County Tax Assessor without complying with the Federal rule?

To state the proposition is to demonstrate its absurdity. Mr. Nixon and Respondent are each "a public figure", in his own sphere, regardless of how he is designated.

If they seek "public figure damages", they come under the "public figure rule".

The Federal doctrine did originally apply to "official conduct of public officials". The District Court of Appeal simply did not realize that it has successively been *extended* to "candidates", to mere "public figures", and to "matters of public interest".

Obviously, there could be no "official" conduct of a public figure. Walker was not engaged in official conduct in the *Associated Press* case. As stated at 388 U.S. 154, Walker "commanded a substantial amount of public interest at the time of the publication", just as did the Mayor of Crystal River, Florida, and candidate for County Tax Assessor, in his area. It was because of Damron's public figure activities

and the interest the public had in him that Meier (who did not know Respondent) thought it was Respondent who was involved and therefore wrote the story about Respondent. Had Respondent not been a public figure his name would not have been known to Meier and would never have been used.

Wally Butts was a football coach employed by a corporation, and Edwin Walker was a private citizen. Butts was accused of fixing football games --- Walker of leading a riot. See *Curtis Publishing Company v. Butts*, infra.

What "official conduct of a public official", as the doctrine is limited by the Florida District Court of Appeal, was involved in either case?

It is not necessary to designate "Richard Nixon" in so many words as a "public figure" or "President" or as "a man in the public eye" to make him a public figure. The test is whether he actually is a public figure or whether we have a matter of public interest. The same thing applies to Respondent.

But here, Respondent *removed any doubt*. He not only specifically alleged he was "Mayor" and "candidate for County Tax Assessor" in his complaint, but claimed he was "harmed with the electorate" and actually lost both offices because of the article. How could there be any clearer application of the *Curtis Publishing* and *Garrison* cases, infra, which prevent public figures from collecting damages (either to their public or personal reputations) without proving "calculated falsehood"? But the words "public figure" or "matter of public interest" do not appear once in the District Court opinion. So far as the District Court was concerned, *Time, Curtis Publishing, Garrison,* and *Associated Press* were never enunciated by the United States Supreme Court.

The public and private reputation damages are inextricably mixed in the verdict, and *Garrison,* infra, holds that private reputation damages come under the Federal rule once public reputation is damaged.

We repeat, Respondent cannot have his cake and eat it, too. When Respondent decided to claim the public and the electorate applied the news story to him as Mayor and candidate for County Tax Assessor, he himself invoked the Federal rule. He asserted he was a public figure and had been damaged as a public figure.

The District Court opinion shuts its eyes to this paramount and overriding factor which Respondent himself elected to inject into the case, and on which he sought and recovered public figure damages, i. e., the application by the voting public of the alleged libel to plaintiff in his public figure capacity and his consequent loss of his political races. It was a matter of public interest.

The District Court opinion is erroneous, dangerous and misleading.

In the *New York Times* case, in *Butts,* in *Walker,* and in *Hill,* all cited infra, as well as in the case presently before the Court, the function served by the First Amendment was to provide the public with information on matters in which it had a legitimate and substantial interest. If the plaintiff in a particular case occupies a position of some "public" status, the public may have a legitimate and substantial interest in statements about him solely for that reason. But this would merely be an incidental aspect of the broader base of the First Amendment protection, the right to inform the public on matters of legitimate public interest, not the basis for a mechanically restrictive rule.

The story here was on a matter of public interest because of the indictment in a civil rights case for perjury. Even if it had not related to a public figure, the newspaper had a right to run a story on a matter of public interest, i.e., federal indictment of a business man for *civil rights perjury.*

Federal Constitutional Law of Libel

There is no need to repeat in detail to this Court what it has said so many times. Plaintiff in any libel action to which the Constitutional rule applies (and this includes stories about public officers, candidates for public office, public figures, and matters of public interest) must prove "actual malice" with "convincing clarity". "Actual malice" means "actual knowledge of falsity" or "recklessness". *New York Times v. Sullivan* (1964) 376 U.S. 254.

"Recklessness" means "a high degree of awareness of probable falsity". *Garrison v. Louisiana* (1964) 379 U.S. 364.

"Intent to harm" does not suffice. There must be "intent to harm through falsehood". *Henry v. Collins* (1965) 380 U.S. 356.

"Failure to investigate" does not impair the privilege. *Beckley v. Hanks* (1967) 389 U.S. 81; *New York Times,* 376 U.S. 287-288; *Time,* 385 U.S. 374, 388-389; *Curtis Publishing,* 388 U.S. 153-154.

"Recklessness" also means "serious doubts as to truth". *St. Amant v. Thompson* (1968) 390 U.S. 727.

And in the case of a public figure, the doctrine covers *private reputation* as well as *public reputation.* "To this end, anything which might touch on an official's *fitness for office* is relevant. Few personal attributes are more germane to fit-

ness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character." *Garrison*, supra, 379 U.S. at page 77.

The Constitutional test has thus been established by the Supreme Court beyond peradventure of doubt.

Public interest had been the basis for the holdings in *New York Times* (page 269) and *Garrison* (pages 74-5), even though the actual holding in those cases was limited to public officials. It was also the basis for the holding in *Rosenblatt v. Baer* (1966) 383 U.S. 75, 84-6. It was the direct holding in *Time v. Hill* (1967) 385 U.S. 374. It was likewise the basis for the holding in *Curtis Publishing Company v. Butts* (1967) 388 U.S. 130, 150-2, which case extended the doctrine to *public figures*.

Recognizing that the public interest in the statements at issue was the basis for the grant of constitutional protection in the *New York Times* case, in *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964), in *Butts*, 388 U.S. at 150-152, and in *Walker*, 388 U.S. at 155, and the clear holding of this Court in *Time, Inc. v. Hill*, 385 U.S. 374, 387-388, both the Court of Appeals for the Ninth Circuit and the Court of Appeals for the Fifth Circuit have explicitly recognized the inevitable applicability of the public interest test in a defamation context. In each case, this Court denied certiorari. See *Time, Inc. v. McLaney*, 406 F.2d. 565 (5th Cir. 1969), cert. denied, 395 U.S. 922 (1969); *United Medical Laboratories, Inc. v. Columbia Broadcasting System*, 404 F.2d 706 (9th Cir. 1968), cert. denied, 394 U.S. 921 (1969). Other courts have also recognized that the "public official and "public figure" cases in this Court were but specific applications of the broader constitutional principles upon which those decisions are

founded, and consequently have not viewed the status of the plaintiff as critical but have accepted and applied the public interest or issue basis for application of the First Amendment privilege. See *Bon Air Hotel, Inc. v. Time, Inc.*, 295 F.Supp. 704 (S.D.Ga.1969); *All Diet Foods Distributors, Inc. v. Time, Inc.* 290 N.Y.S.2d. 445 (N.Y.Sup.Ct.1967); *Fotochrome, Inc. v. New York Herald Tribune, Inc.* (Sup. Ct. of N.Y. 1969) 61 Misc. 2d. 226; *Farnsworth v. Tribune Company* (Sup.Ct. of Ill. 1969) 253 N.E.2d. 408; and *Wasserman v. Time* (C.A.D.C. March 3, 1970) ..... F.2d. ..... These cases all conform to the principles and analysis announced by this Court.

The newspaper under the First Amendment had the right to report stories of public interest, which would include the indictment for perjury in a civil rights case. But if there had been any doubt as to the First Amendment applicability, Respondent removed all doubt by his pleadings and proof of public interest and public figure damages.

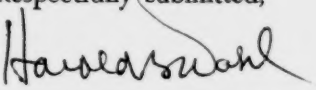
Here we had a small rural county with not even a newspaper of its own. The time was April, 1966, *at the height of the civil rights controversy* and in the midst of an election campaign. News Editor Meier erroneously (but without malice) understood that it was the Mayor and candidate for County Tax Assessor who had been indicted for perjury in a civil rights case, and wrote the story about him. Then, to remove any doubt, Respondent plaintiff filed his suit, alleged that he was Mayor and candidate for County Tax Assessor, that the public applied the story to him in that public figure capacity, and that he was damaged "as a public official, candidate for public office ....." Notwithstanding Respondent predicated his case on the public figure angle, and his testimony was almost exclusively on that alleged damage, the Court did not even let the jury consider the question of

malice. Instead it told the jury that the only question was how much money Respondent was entitled to, and that his damages expressly included damage to him as a "public official."

CONCLUSION

For the reasons set forth hereinabove, this Petition for a Writ of Certiorari should be granted. Petitioners respectfully urge this Court to reverse summarily the judgment of the District Court of Appeal, First District, State of Florida, concurrently with its issuing the Writ of Certiorari.[5]

Respectfully submitted,



HAROLD B. WAHL,
Loftin and Wahl,
414 Florida Title Building,
Jacksonville, Florida, 32202,

Attorneys for Petitioners.

NOTE 5: As the Court did in *Beckley* v. *Hanks*, (1967) 389 U.S. 81.

APPENDIX A

OPINION — 221 So.2d 459

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA
JANUARY TERM, A. D. 1969.

CASE NO. K-86

OCALA STAR-BANNER COMPANY,
a Florida corporation, and
LOYAL PHILLIPS, individually,

Appellants,

v.

LEONARD DAMRON,

Appellee.

Opinion Filed April 22, 1969.

An Appeal from the Circuit Court for Marion County.
D. R. Smith, Judge.

Loftin & Wahl and Greene, Ayres, Swigert & Cluster, for Appellants.

Wallace Dunn, for Appellee.

PER CURIAM

Appellant has appealed a final judgment entered pursuant to a jury verdict awarding damages to the appellee in a libel action.

The libel consisted of an item published in appellant's newspaper stating that appellee had been indicted for perjury by the federal government. As it turned out, the publication was false in that it was appellee's brother who had been so indicted and not the appellee himself. A directed verdict on the question of liability was granted, and the case went to the jury on damages only.

Appellant contends that this case is controlled by the recent pronouncements of the federal courts on the law of libel as it relates to the news media typified by New York Times v. Sullivan, 376 U. S. 24, 84 S. Ct. 710, 11 L. Ed. 2d 686, which in essence held that before a plaintiff may recover for libel from a newspaper, express malice must be shown. This principle seems to rest on the proposition that a newspaper has a duty to comment upon the manner in which our public officials perform the duties of their office and that in so commenting, the media is entitled to a greater latitude in bringing out matters concerning such officials which when spoken or written about a nonpublic official or figure might be libelous per se. We have no particular quarrel with that concept when its application is limited to cases giving rise to its emergence.

In the New York Times case, the court stated at 11 L.Ed. 2d 706:

> "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood *relating to his official conduct* unless he proves that the statement was made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not." (Court supplied emphasis)

The court further stated at page 708:

> "We hold today that the Constitution delimits a State's power to award damages for libel in actions brought by public officials *against critics of their official conduct.*" (Court supplied emphasis).

And again in footnote 23 at page 708:

> ". . . that the allegations in the advertisement concerned what was allegedly his official conduct as Commissioner in charge of the Police Department. . . . they must be read as *describing his performance of his official duties.*" (Court supplied emphasis)

We have underlined certain phrases in the foregoing excerpts from New York Times to demonstrate the basis of our impression that it is the public officer's official conduct or the manner in which he performs his duties that affords the media a wide latitude for comment. It is the plaintiff officer's performance of duty that is so affected by the public interest which justifies the protection from libel actions afforded by the New York Times doctrine in absence of proof of malice. Indeed, the article itself makes no reference at all to the plaintiff's position as an officer or candidate for office. Hence, the record is devoid of any evidence to show that the appellant was acting in the area falling within the federal rule asserted.

An examination of the defamatory publication which gave rise to this case reveals that the plaintiff's official conduct or the manner in which he performed his duties were not the basis for the inaccuracy here involved; and, hence, it does not come within the protection afforded by the rule announced in the New York Times case. It follows therefore

that the trial judge correctly held that it was unnecessary for the plaintiff to show malice.

We have considered the other matters raised by appellant and find them to be without substantial merit.

AFFIRMED.

RAWLS, Acting Chief Judge; JOHNSON and SPECTOR, JJ., CONCUR.

APPENDIX B

ORDER DENYING MOTION TO DISMISS APPEAL

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1969
MONDAY, JULY 7, 1969

CASE NO. 38,658

OCALA STAR-BANNER COMPANY,
etc., et al.,

Appellants,

vs.

LEONARD DAMRON,

Appellee.

Appellee's motion to dismiss appeal is hereby denied.

ERVIN, C. J., ROBERTS, THORNAL and CARLTON, JJ., concur.

DREW, J., dissents.

APPENDIX C

ORDER DISMISSING APPEAL

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM A. A. 1970

CASE NO. 38,658

OCALA STAR-BANNER COMPANY,
a Florida corporation, and
LOYAL PHILLIPS, individually,
Appellants,

vs.

LEONARD DAMRON,
Appellee.

Opinion filed January 21, 1970.

An Appeal from the District Court of Appeal, First District.

Harold B. Wahl of Loftin and Wahl, for Appellants.

Wallace Dunn, for Appellee.

PER CURIAM.

Review having been sought by direct appeal from the District Court of Appeal, First District, and argument having been heard and the record having been examined, it is our opinion and we hold that the cause sub judice is not within the orbit of the jurisdiction of this court as set forth by Section 4(2), Article V, Constitution of Florida. Therefore the cause is dismissed ex mero motu.

It is so ordered.

ERVIN, C.J., Roberts, Drew, Adkins and Boyd, JJ., concus.

APPENDIX D

ORDER DENYING REHEARING

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM A.D. 1970
FRIDAY, FEBRUARY 20, A.D. 1970

CASE NO. 38,658

OCALA STAR-BANNER COMPANY,
a corporation, et al,

Appellants

-vs-

LEONARD DAMRON,

Appellee.

On consideration of the Petition for Rehearing filed by Attorneys for Appellants,

IT IS ORDERED BY THE COURT that said petition be, and the same is hereby, denied.

A TRUE COPY

(COURT SEAL)

TEST:

/s/ SID J. WHITE
CLERK SUPREME COURT

APPENDIX E

Excerpts from Trial Court's Instructions to Jury Contrary to New York Times Rule.

"The Court instructs the Jury that you need not consider whether a libel has been committed and instructs you that there *must be a finding in favor of the Plaintiff* in accordance with the other instructions given you by the Court." (TT. 301).

"You are instructed that in this case the charge made against the Plaintiff was libelous, per se, and that it created a *presumption of damage* to the Plaintiff * * *." (TT. 303).

"The Court instructs the Jury that in your consideration of damages that may be awarded to the Plaintiff, you may do so in accordance with the following: First, as to compensatory or actual damages, you may award a sum that will fully and adequately compensate the Plaintiff for his mental suffering, embarrassment and injury to his reputation as a citizen and *public official*, and any other damages that would naturally flow from being falsely accused of a felony." (TT. 304).

"In other words, if you are reasonably satisfied from the evidence that the defendants imputed the charge of perjury to the plaintiff, of which he was not guilty, *then you may infer that it was maliciously made* and it is not necessary to prove any express malice or ill-will in order to warrant a verdict for punitive damages in favor of the plaintiff." (TT. 305).

(As stated in Appendix A by the District Court of Appeal:

> "A *directed verdict* on the question of liability was granted, and the case went to the jury on damages only.")

APPENDIX F

COMPLAINT IN TRIAL COURT

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR MARION COUNTY.

AT LAW NO. 14659

LEONARD DAMRON,

Plaintiff,

vs.

OCALA STAR-BANNER COMPANY, a Florida corporation, and LOYAL PHILLIPS, individually,

Defendants.

COMPLAINT

The Plaintiff, Leonard Damron, by his undersigned attorney, brings this complaint against the Defendants, Ocala Star-Banner Company, a Florida corporation, and Loyal Phillips, individually, and alleges:

1. The Plaintiff is a resident of Crystal River, Citrus County, Florida.

2. The Defendant, Ocala Star-Banner Company, a Florida corporation, has its principal place of business in Marion County, Florida, and is the owner and distributor of the Ocala Star-Banner, a newspaper which is generally distributed in Marion, Citrus, Levy and Sumter Counties, and elsewhere. The Defendant, Loyal Phillips, is a resident of Ma-

rion County, Florida, and is a Vice President of the Ocala Star-Banner Company, and Publisher of the Ocala Star-Banner.

3. That the Defendants caused to be published in the April 18, 1966 issue of the Ocala Star-Banner a defamatory article which appeared on page 9 thereof entitled: DAMRON'S CASE PASSED OVER TO NEXT U. S. COURT TERM, and said article began with the statement:

> "A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harrold Carswell in Gainesville. * * *"

A copy of said article in total is attached hereto and made a part hereof as Plaintiff's Exhibit "A".

4. That on April 19, 1966, the Plaintiff did cause to be served, by mail at least five days before the institution of this action, upon the Defendant, Loyal Phillips, Publisher, who is a Vice President of the Ocala Star-Banner Company, and upon the Defendant, Ocala Star-Banner Company, a notice in writing specifying the aforesaid article and the statements therein which Plaintiff alleged to be false and defamatory, a copy of said notice is attached hereto and made a part hereoff as Plaintiff's Exhibit "B".

5. That the aforesaid notice was delivered to the Defendant, Loyal Phillips, Publisher and Vice President of the Ocala Star-Banner Company, and the Defendant, Ocala Star-Banner Company, on April 20, 1966, a copy of the return receipt which is proof of service is attached hereto and made a part hereof as Plaintiff's Exhibit "C".

6. That the Plaintiff is and was on April 18, 1966, a pub-

lic officer, being elected to the office of Mayor of Crystal River, Citrus County, Florida, and on said date was a candidate for the office of Tax Assessor for Citrus County, Florida, and was and is a businessman in said Town and County, owning and operating a garage. The Plaintiff, Leonard Damron, is the only garage owner by the name of Leonard Damron doing business in the Marion, Citrus, Levy and Sumter County area.

7. That the words as set forth above in the article published on April 18, 1966, from their common usage imputed the charge of perjury to the Plaintiff, all from which the electorate of Crystal River and Citrus County, Florida, and others would believe that the Plaintiff had committed the crime of perjury, which is a felony punishable by imprisonment, and has left the impression that the Plaintiff was dishonest and had perjured himself in a United States Federal Court trial.

8. That the Plaintiff has never been charged with the crime of perjury and the statements contained in the article published by the Defendants on April 18, 1966, were false and libelous per se.

9. That the aforesaid article published on April 18, 1966 by the Defendants, set forth as Plaintiff's Exhibit "A", was published at a time and in a newspaper in general circulation in an area where voters resided who would cast their votes in a democratic primary on May 3, 1966, in which primary the Plaintiff was a candidate for the office of Tax Assessor of Citrus County, Florida, opposing two other candidates. That throughout the remainder of the political campaign, from April 18, 1966, the Plaintiff was repeatedly required to answer questions regarding the charges against him of perjury purportedly pending, and that although the Plaintiff fervently denied such charges and endeavored to make

it known that the statements printed in said article were false, he has been unable to remove the damage to his reputation caused by said article.

10. That the Plaintiff continues to hold the office of Mayor of the Town of Crystal River, Citrus County, Florida, having been duly elected to said office prior to the publication of the said article attached hereto as Plaintiff's Exhibit "A", and Plaintiff desires to continue to hold this office for which he will be required to campaign and run for re-election in December of 1966, and overcome the false and defamatory statements in said article that Defendants have caused to be published, which continues to create doubt and suspicion in the minds of the people of Citrus County, as to the integrity of the Plaintiff.

11. That because of the actions of the Defendants in the publication of the aforesaid article as attached hereto as Plaintiff's Exhibit "A", the Plaintiff has suffered irreparable damages to his reputation, as an individual, public officer, candidate for public office and as a businessman.

WHEREFORE, Plaintiff demands judgment for compensatory damages against Defendants in the amount of Fifty Thousand ($50,000.00) Dollars, and his costs.

WHEREFORE, Plaintiff demands judgment against the Defendants for punitive damages in the amount of Five Hundred Thousand ($500,000.00) Dollars.

WHEREFORE, Plaintiff demands trial by jury.

/s/ WALLACE DUNN
WALLACE DUNN
202 Legal Center
Ocala, Florida

Attorney for the Plaintiff

EXHIBIT A

Monday, April 18, 1966 Ocala Star-Banner

DAMRON CASE PASSED OVER TO NEXT U.S. COURT TERM

INGLIS – A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harrold Carswell in Gainesville.

Damron was indicted by a Federal grand jury in Tallahassee last January and charged with perjury in a 1964 civil case which resulted in damages of $85,000 being awarded to a Yankeetown couple.

Mrs. Gail Finley alleged that Levy County Deputy Sammy Cason slammed on brakes causing her to injure her neck in October of 1962.

Cason and Deputy Walter Beckham went to Yankeetown with a warrant for the arrest of Mrs. Jean Rich Sill, who was allegedly in the Izaac Walton Lodge.

According to officials, the Finleys interferred with the officers, were arrested and charged with interfering with arrest.

A conviction obtained in County Court has been upheld through appeals by the Florida State Supreme Court.

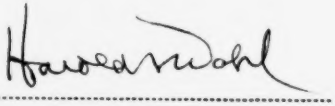
The civil suit which followed was filed under an old, little-used federal statute in which the Finleys charged former sheriff J. W. Turner and Cason with a violation of their civil rights.

Damron testified that he had seen Mrs. Finley in a neck brace in late 1957 or early 1958 several years prior to the incident, but numerous other witnesses, summoned by the plaintiff, gave testimony, saying that Mrs. Finley had not previously worn a brace.

Damron was released on $2,000 bond, following his arrest by federal marshals Jan. 27.

CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 33, I certify that I have this March 20, 1970, deposited in the United States mail box at Jacksonville, Florida, with first-class postage prepaid, envelopes containing copies of the foregoing petition and appendices addressed to (1) Hon. Wallace Dunn, Attorney for Respondent and counsel of record for him, at his office address, 1 East Silver Springs Boulevard, Ocala, Florida 32670; (2) Hon. Sid J. White, Clerk, Supreme Court of Florida, Tallahassee, Florida 32304; and (3) Hon. Raymond E. Rhodes, Clerk, Florida District Court of Appeal, First District, Tallahassee, Florida 32304; and that these are all the parties required to be served.



Harold B. Wahl

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

NO. 1373

OCALA STAR-BANNER COMPANY,
a corporation, and LOYAL PHILLIPS,
Petitioners,

vs.

LEONARD DAMRON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

BRIEF FOR RESPONDENT IN OPPOSITION

Respondent, Leonard Damron, prays that the Writ of Certiorari sought by Petitioners, Ocala Star-Banner Company, a corporation, and Loyal Phillips, to review a judgment of the District Court of Appeal First District, State of Florida, entered in the above entitled cause be denied.

The following symbols will be used:

"R" for trial clerk's certified record (Volume I)

"TT" for court reporter's separate volumes of trial transcript (Volumes II and III)

"DC" for record volume in the District Court of Appeal (Volume VI)

"SC" for the record in the Florida Supreme Court

OPINIONS BELOW

The opinion of the District Court of Appeal, First District, State of Florida, is reported at 221 So. 2d. 459. (Petitioners' Appendix A) The opinion of the Florida Supreme Court refusing to review said decision (SC 8) is not yet reported. (Petitioners' Appendix C)

JURISDICTION

The Petitioners have failed to timely raise a federal constitutional question in this cause to invoke the jurisdiction of this Court.

The complaint (R 1) in this cause was filed by Respondent on July 29, 1966, and the jury's verdict (R 18) returned on January 24, 1968.

An examination of the record and the transcript of the trial testimony show that no federal constitutional question was raised by the Petitioners until their motion for new trial (R 20-21) was filed on February 2, 1968.

The Petitioners did file a motion to dismiss (R 7) and a motion to strike (R 8) on August 23, 1966, but there were no allegations or statements therein showing specifically and with particularity that a federal constitutional question was raised.

The Petitioners' answer (R 10-12) is void of any defenses based on a federal constitutional question and the Petitioners presented no request for jury instructions raising such a question at the close of the evidence. (TT 285-298)

Rule 1.11[1] *Defenses. (b) How Presented, of the Florida Rules of Civil Procedure,* in effect from the time this cause was filed through the trial proceedings provides:

NOTE 1: Rule 1.11. Defenses. Florida Rules of Civil Procedure, 1965 Revision, Effective January 1, 1966, Supreme Court of Florida, Opinion 178 So. 2d 15, Pages 16, 19 and 20. Renumbered 1966 revision and is now Rule 1.140.

"Every defense, in law or fact, to a claim for relief in any pleading, shall be asserted in the responsive pleading thereto if one is required except that the following defenses may be made by motion at the option of the pleader: . . . (6) failure to state a cause of action . . . A motion making any of these defenses shall be made before pleading if a further pleading is permitted. *The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not so stated shall be deemed to be waived.*" (Emphasis supplied)

(The full text of this rule is set forth in Appendix A.)

The federal question must be presented to the trial court at the point considered appropriate under state procedure. A state procedural rule which forbids the raising of a federal question at late stages in the case, or by other than the prescribed method has been recognized as a valid exercise of state power. *Williams v. Georgia*, 349 U.S. 375, 382-3; *Brown v. Massachusetts*, 144 U.S. 573, 580 (failure to raise question before verdict held to me fatal); *Edelman v. California*, 344 U.S. 357 (failure to raise issue at trial). Thus a state "may attach reasonable time limitations to the assertion of federal constitutional rights," and such limitations must be respected. *Michel v. Louisiana*, 350 U.S. 91, 97.

QUESTIONS PRESENTED

1. Does a libel judgment against newspaper Petitioners in favor of Respondent Mayor and candidate for County Tax Assessor (primarily covering damages for loss of election) deprive Petitioners of their Constitutional rights where the record contains no evidence of (or even consideration given to necessity for) actual malice as defined by this Court?

2. Does the State Court's instruction to a jury (affirmed by the District Court of Appeal) that it must return a libel verdict against Petitioners in favor of Respondent Mayor and candidate for County Tax Assesor without any regard for actual malice, as defined by this Court, deprive Petitioners of their Constitutional rights?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States

Amendment I:

> "Congress shall make no law . . . abridging the freedom of speech or of the press . . ."

Amendment XIV:

> ". . . (N) or shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE

This action was originally filed by Respondent on July 29, 1966. The Petitioners first raised a federal constitutional question in their motion for new trial filed on February 2, 1968. (R 20-21) A motion to dismiss and a motion to strike (R 7-8) were filed by Petitioners on August 23, 1966. Both of these motions were completely void of any references to a federal constitutional question which is required to be stated by the Florida Rules of Civil Procedure in effect at the time these motions were filed. (Appendix A) The Petitioners' answer (R 10-12) did not raise any federal constitutional question and no jury instructions related to federal constitutional questions were requested.

Petitioners admitted their liability as to compensatory damages before trial as stated by the trial judge. (TT 274, lines 19 and 20) In their pleading Petitioners admitted in

Paragraph 1 of their answer (R 10-12) that they had published a defamatory article about the Respondent as alleged in the complaint. (R 1-6 and Petitioners' Apppendix F)

The trial court granted Respondent's motion to amend the complaint after the close of Respondent's case in chief to conform to the evidence (TT 143-146) and the Petitioners did not object. This amendment included Respondent's damages for embarrassment, mental anguish and upset.

ARGUMENT

I. Petitioners Admitted Their Liability

Before Trial

The trial court's granting of Respondent's motion for a directed verdict was with good cause and sound reason and not as Petitioners have represented on Page 14 of their brief.

The trial court, when ruling upon Respondent's motion for a directed verdict (TT 273-277) stated:

At TT 274, lines 19 and 20:

BY THE COURT: "Well, I think liability as to compensatory damages is admittted in this case."

At TT 276, line 5, Petitioners' trial attorney stated:

BY MR. AYRES: "He still has to prove his damages."

At TT 276, line 19:

BY THE COURT: "And I grant your motion to that extent."

At TT 277, lines 4 through 10:

BY MR. AYRES: "And in other words, I . . . I don't take it that your ruling comprehends an in-

struction by you to the jury that they must return a verdict for the Plaintiff because of the publication standing alone without more."

BY THE COURT: "No, they've still got to decide what damage he suffered."

BY MR. AYRES: "Yes Sir."

The trial court's statement that Petitioners admitted liability to compensatory damages was based on the fact that the liability of the Petitioners was admitted at the pretrial conference. However, no pretrial order was entered in this cause.

Paragraph 3 of the Respondent's complaint alleged the Petitioners published a defamatory article about the Respondent (R 1-6) (Petitioners' Appendix F) and Petitioners admitted this allegation in Paragraph 1 of their answer. (R 10-12)

II. Petitioners Confuse the Law

The Petitioners' argument in support of Certiorari attempts to confuse the law in *New York Times v. Sullivan* (1964) 376, U.S. 254, relating to public officials and the law in *Curtis Publishing Co. v. Butts and Associated Press v. Walker* (1967) 388 U.S. 130, relating to public figures. Since the *Butts* and *Walker* decision this Court has rendered other decisions affecting public officials, *Beckley Newspapers Corp. v. Hanks* (1967) 389 U.S. 81; *St. Amant v. Thompson* (1968) 390, U.S. 727, but has not commingled the rules laid down by this Court on public officials with the rules on public figures. This Court's specific pronouncement of the rule in *New York Times v. Sullivan* provides that a public official cannot recover damages for a libel relating to his official conduct unless he proves malice.

An examination of the article sued upon in this cause (Exhibit A) shows clearly that this article had no relationship to the official conduct of the Respondent.

This Court stated when this rule was pronounced in *New York Times v. Sullivan* that official conduct relates to the describing of performance of official duties, 376 U.S. 254, at Page 283, Note 23.

This is the basis upon which the District Court of Appeal First District, State of Florida, rendered its opinion. (DC 1, 221 So. 2d, 459, Petitioners' Appendix A) That Court merely held that the *New York Times v. Sullivan* rule does not apply to the facts in this case.

The Petitioners' appeal to the Florida Supreme Court was predicated upon the misconceived idea that the District Court of Appeal (supra) had initially construed a controlling provision of the Federal Constitution. (See Petitioners' Notice of Appeal, SC 1) Such a construction would have been a ground for the Florida Supreme Court's taking jurisdiction. (See *Section 4 (2) Article V, Constitution of Flolrida)*

Petitioners' brief to the Florida Supreme Court was written in the same manner as the brief here for Certiorari, attempting to indicate some question did exist for jurisdiction.

The Florida Supreme Court denied Respondent's motion to dismiss for want of jurisdiction initially when only the Petitioners' appellate brief and the oral argument on the motion to dismiss were before the court.

After Respondent's brief was filed in the Florida Supreme Court, and oral argument, the Florida Supreme Court, on closer examination, dismissed Petitioners' appeal to that court upon finding that Petitioners' appeal was not well founded, ruling it had no jurisdiction since it was obvious there had been no construction of the Federal Constitution as alleged by the Petitioners. (SC 8)

The Respondent here is clearly a public official as defined by this Court in *Rosenblatt v. Baer* (1966) 383 U.S. 75, and not a public figure. The libel sued upon here is outside the scope of the *New York Times v. Sullivan* and subsequent related public official libel action decisions rendered by this Court. The rule laid down in *New York Times v. Sullivan* has no application to this cause because the libel here does not relate to official conduct.

Therefore, Petitioners' Questions Presented No. 1 and argument thereon that the rule requiring malice must be alleged and proved does not apply to this cause.

Petitioners further confuse the question by citing other authorities which have no relationship to this cause under discussion. This cause is simply that the libel of public official on a matter unrelated to his official conduct does not come within the rule laid down in *New York Times v. Sullivan.*

III. Jury Instructions

The Petitioners in their Questions Presented No. 2 have inquired as to whether or not a state court must instruct a jury as to actual malice where a libel action relates to a public official, yet no where in Petitioners' Statement of the Case or Petitioners' argument or Petitioners' assignment of error has there been shown that any request was ever made for such a jury instruction by the Petitioners. *Rule 1.470,*[2] *Exceptions Unnecessary (b) Instruction to Jury, of the Florida Rules of Civil Procedure* in effect when this cause was tried provides:

> "No party may assign as error the giving of any charge unless he objects thereto at such time *or the failure to*

NOTE 2: Rule 1.470. Exceptions Unnecessary. Florida Rules of Civil Procedure, 1966 Revision, Effective January 1, 1967, Supreme Court of Florida, Opinion 187 So. 2d 598, Page 626.

give any charge unless he requested the same." (Emphasis supplied)

(The full text of this rule is set forth in Appendix B.)

The Petitioners' inquiry, therefore, is without merit since Petitioners made no request for a jury instruction upon which they raise their Questions Presented No. 2.

IV. Respondent Properly Pled His Damages

Contrary to argument of Petitioners, the Respondent did properly plead his damages in his complaint which were directed to his public office.

This Court in *New York Times v. Sullivan*, 376 U.S. 254, 268, stated:

> "The question before us is whether this *rule of liability* as applied to an action brought by a public official against critics of his official conduct abridges the freedom of speech . . ." (Emphasis supplied)

This rule being one on the question of privilege from liability cannot be used as a bar to recover damages incident to a libel action which is outside of the rule, nor can it be argued that if an action does exist in the first instance it can be barred by the allegations and proof for damages which naturally flow from the Petitioners' act.

The Petitioners, in answering Respondent's complaint (R 1) Paragraph 3, admitted in their answer (R 10-12) that they had published a defamatory article about the Respondent and directed their answer in an endeavor to mitigate damages, thus the only issue to try was one for damages. (See argument on Petitioners Admit Liability Before Trial, supra)

V. Incorrect Statement by Petitioners

Petitioners have stated on Page 14 of their brief that the attorney for the Respondent understood how the jury

verdict was determined. Although this is irrelevant, it is pointed out that Respondent's attorney was also the attorney present at the Supreme Court of Florida at the time of oral argument, and he has no recollection of having made such a statement nor could he make such a statement since he has had no direct or indirect contact with the jury in this cause to determine how they arrived at their verdict.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

WALLACE DUNN
1 E. Silver Springs Boulevard
Ocala, Florida 32670
Attorney for Respondent

APPENDIX A
FLORIDA RULES OF CIVIL PROCEDURE
1965 Revision

Effective January 1, 1966
Supreme Court of Florida
Opinion 178 So. 2d 15
Rule 1.11 at pages 16, 19 and 20

RULE 1.11. DEFENSES.

(a) *When Presented.* A defendant shall serve his answer within twenty days after service of original process and the original pleading upon him, or not later than the date fixed in a notice by publication, which date shall be not less than twenty-eight nor more than sixty days after the first publication of the notice. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty days after the service upon him. The plaintiff shall serve his answer to a counterclaim within twenty days after service of the counterclaim, or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs. The service of a motion under this rule (except a motion for judgment on the pleadings) alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after service of the more definite statement.

(b) *How Presented.* Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the respon-

NOTE: **Although the Florida Rules of Civil Procedure have been amended since January 1966, Rule 1.11 (b) has not been amended except it is now re-numbered as Rule 1.140 Defenses, in re Florida Rules of Civil Procedure 1966 Revision, 187 So. 2d 598, Page 605.**

sive pleading thereto if one is required; except that the following defenses may be made by motion at the option of the pleader: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a cause of action, (7) failure to join indispensable parties. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. *The grounds on which any of the enumerated defenses are based and the substantial matters of law intended to be argued shall be stated specifically and with particularity in the responsive pleading or motion. Any ground not so stated shall be deemed to be waived* except any ground showing that the court lacks jurisdiction of the subject matter may be made at any time. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief.

(c) *Motion for Judgment or Decree on the Pleadings.* After the pleadings are closed, but within such time as not to delay the trial any party may move for judgment or decree on the pleadings.

(d) *Preliminary Hearings.* The defenses 1 to 7, subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment or decree mentioned in subdivision (c) of this Rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof shall be deferred until the trial.

(e) *Motion for More Definite Statement.* If a pleading to which a responsive pleading is permitted is so vague or am-

biguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order or within such other time as the court may fix the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) *Motion to Strike.* Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) *Consolidation of Defenses.* A party who makes a motion under this rule may join with the other motions herein provided for and then available to him. If a party makes a motion under this rule and does not include therein all defenses and objections then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

(h) *Waiver of Defenses.* A party shall be deemed to have waived all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1) that the defense of failure to state a cause of action, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2)

that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter. See Rule 1.39. The objection or defense, if made at the trial, shall be disposed of as provided in Rule 1.15(b) in the light of any evidence that may have been received.

Committee Note: **Substantially the same as Common Law Rule 13 and Equity Rule 33. Subsection (b) is amended to restore demurrer practice to the extent of requiring the specific grounds of defensive motions to be stated.**

(Emphasis supplied)

APPENDIX B
FLORIDA RULES OF CIVIL PROCEDURE
1966 Revision
Effective January 1, 1967
Supreme Court of Florida
Opinion 187 So. 2d 598
Rule 1.470 at Page 626

RULE 1.470. EXCEPTIONS UNNECESSARY.

(a) *Adverse Ruling.* For appellate purposes no exception shall be necessary to any adverse ruling, order, instruction or thing whatsoever said or done at the trial or prior thereto or after verdict, which was said or done after objection made and considered by the trial court and which affected the substantial rights of the party complaining and which is assigned as error.

(b) *Instruction to Jury.* No later than at the close of the evidence, the parties shall file written requests that the court charge the jury on the law set forth in such requests. The court shall then require counsel to appear before it to settle the charges to be given. At such conference all objections shall be made and ruled upon and the court shall inform counsel of such general charges as it will give. *No party may assign as error the giving of any charge unless he objects thereto at such time or the failure to give any charge unless he requested the same.* The court shall charge the jury after the arguments are completed.

(c) *Orders on New Trial, Directed Verdicts, etc.* It shall not be necessary to object or except to any order granting or denying motions for new trials, directed verdicts or judgments non obstante veredicto or in arrest of judgment to entitle the party against whom such ruling is made to have the same reviewed by an appellate court.

Committee Note: **Common Law Rule 39.**

(Emphasis supplied)

EXHIBIT A

Monday, April 18, 1966 Ocala Star-Banner

DAMRON CASE PASSED OVER TO NEXT U.S. COURT TERM

INGLIS — A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harrold Carswell in Gainesville.

Darmon was indicted by a Federal grand jury and charged with perjury in a 1964 civil case which resulted in damages of $65,000 being awarded to a Yankeetown couple.

Mrs. Gail Finley alleged that Levy County Deputy Sammy Cason slammed on brakes causing her to injure her neck in October of 1962.

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Damron testified that he had seen Mrs. Finley in a neck brace in late 1957 or early 1958 several years prior to the incident, but numerous other witnesses, summoned by the plaintiff, gave testimony, saying that Mrs. Finley had not previously worn a brace.

Damron was released on $2,000 bond, following his arrest by federal marshals Jan. 27.

CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 33, I certify that I have this April ....., 1970, deposited in the United States mail box at Ocala, Florida, with first-class postage prepaid, envelopes containing copies of the foregoing Brief for Respondent in Opposition and appendices addressed to (1) Harold B. Wahl, Attorney for Petitioners, Loftin and Wahl, 414 Florida Title Building, Jacksonville, Florida 32202; (2) Hon. Sid J. White, Clerk, Supreme Court of Florida, Tallahassee, Florida 32304; and (3) Hon. Raymond E. Rhodes, Clerk, Florida District Court of Appeals, First District, Tallahassee, Florida 32304; and that these are all the parties required to be served.

.....

WALLACE DUNN, *Attorney for Respondent*
1 E. Silver Springs Boulevard
Ocala, Florida 32670

Supreme Court, U
FILED
APR 25 1970
JOHN F. DAVIS, CLERK

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No. [illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1969

OCALA STAR-BANNER COMPANY,
a corporation, and LOYAL PHILLIPS,

Petitioners,

vs.

LEONARD DAMRON,

Respondent.

PETITIONERS' SUPPLEMENTAL BRIEF ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

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April, 1970.

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Respondent.

PETITIONERS' SUPPLEMENTAL BRIEF ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

STATEMENT

Petitioners filed their Petition for Certiorari on March 30, 1970, to review a decision and judgment of the District Court of Appeal, First District, State of Florida, reported at 221

So.2d. 459. That decision erroneously construed the Federal Constitutional Law of Libel and held the First Amendment protection was limited to the "*official* conduct" of a "public official".

Respondent has filed Brief in Opposition, first raising certain questions as to jurisdiction. Petitioners feel constrained to file this brief reply as permitted by Supreme Court Rules 24.4 and 24.5.

FEDERAL QUESTION PROPERLY RAISED BELOW

Respondent's Brief in Opposition appears to argue that the Federal Constitutional Question was not timely raised below.

The answer is:

(a) Petitioners filed motion for new trial challenging the sufficiency of the evidence to support the jury verdict and to meet the Constitutional standards (R. 20, 21). The trial court denied motion for new trial, *expressly considered and passed on the Federal Constitutional question,* and held:

> "1. That the verdict for the Plaintiff in the amount of $22,000 is not excessive, and *is supported by the evidence.*"[1]
>
> "2. That the decisions of the United States Supreme Court on libel actions as decided in the case of New York Times vs. Sullivan, and *subsequent* decisions *cited in defendant's motion for new trial,*[2] relating to public officials or public figures in the official conduct of

---

NOTE 1: In Florida, as elsewhere, the question of the weight and sufficiency of the evidence must be raised by motion for new trial. 2 Fla.Jur., Appeals, Sec. 73, and cases cited.

NOTE 2: Italics here and elsewhere added by us.

their office or position *are not applicable to this cause of action* which was founded upon a newspaper publication of the defendants which *was libelous per se* and made no reference to the public offices[3] held or sought by the plaintiff."

"3. That there is no error in the proceedings." (R. 22).

(b) The trial court had theretofore denied motions to dismiss the complaint for failure to allege "malice", and to strike the claim for "*public figure damages*" and damages "as a *public officer* or as a *candidate* for public office."[4] (R. 7, 8, 9)

(c) The District Court of Appeal opinion, here sought to be reviewed, dealt solely and entirely with the Federal Constitutional question, and squarely and unequivocably held the so-called Federal Constitutional Law of Libel was not applicable here (221 So.2d 459 – Appendix A to Petition for Certiorari). Nothing else was even discussed by the Appeal Court.

(d) By per curiam order (231 So.2d. 822) the Supreme Court of Florida refused to review the decision of the District Court of Appeal. It was first necessary to seek review by the Florida Supreme Court to get the case here.

(e) At no point in the proceedings did any court even intimate the Constitutional question had not been raised - in

---

NOTE 3: But the editor testified the only reason he made the mistake *and used the name "Leonard"* Damron was because he thought it was the public figure (who had been so much in the public eye and in the news) who was involved. (TT. 163, 164, 171)

NOTE 4: The Federal doctrine was the basis for these motions.

fact, it was the primary issue which was considered and upon which each the trial and appeal court ruled, as shown by the record. As stated in Respondent's own cited case of *Williams v. Georgia* (1955) 349 U.S. 375, 383:

> "But where a State allows (Federal Constitutional) questions of this sort to be raised at a late stage and be determined by its courts as a matter of discretion, we are not concluded from assuming jurisdiction and deciding whether the state court action in the particular circumstances is, in effect, an avoidance of the federal right."

See also Stern and Gressman on Supreme Court Practice, Second Edition, page 91, Fourth Edition, page 127, citing cases and holding that when the state court assumes or holds that a federal question is properly before it and then proceeds to consider and dispose of that issue (as was done here both in the trial court and at 221 So.2d 459) the United States Supreme Court's concern with the proper raising of the federal question in the state court disappears. Just as in *Beckley*, infra, the fact that the State Supreme Court refused to review, cannot prevent this Court from reviewing an erroneous constitutional holding.

(f) Finally, Respondent cites on page 6 of his brief *Beckley Newspaper Corp. v. Hanks* (1967) 389 U.S. 81, and we quote from page 82:

> "However, since it is clear that the jury verdict was rendered upon instructions which misstate the law and since petitioner has properly challenged the sufficiency of the evidence, *we have undertaken an independent examination* of the record as a whole *'so as to assure ourselves that the judgment does not constitute a forbidden intrusion* on the field of free expression."

Respondent's attempts to go outside the record as to alleged oral concessions by trial counsel Ayres at pre-trial (not shown by the record and denied by Ayres) do not overcome the fact that the court directed a verdict on liability over Petitioners' objections, the point was timely raised, and the Federal Constitutional Law of Libel was the chief issue considered and disposed of in both the trial court's order (R. 20) and the Appeal Court opinion sought to be reviewed (Appendix A). Cf. *Beckley*, supra, as to improper instructions actually submitted by counsel for defendant newspaper itself.

Nor is there any indication by either the trial court or the appeal court that the Florida courts felt Petitioners had waived anything or that the Federal Constitutional question was not properly before the Florida courts. They based their whole decision on their construction of the Federal doctrine under the First Amendment. It is that construction and that decision, spread upon the public records and printed in Southern Reporter 2nd, that so disturb Petitioners.

The opinion at 221 So.2d 459 *speaks for itself* as to whether it passed on the constitutional question. The Florida procedure rules printed as Appendices to Respondent's brief were not even mentioned in the briefs and arguments in, or the orders of, the Florida Supreme Court.

LOWER COURT INCORRECTLY CONSTRUED FEDERAL CONSTITUTIONAL LAW OF LIBEL

Respondent devotes only two full pages of his brief to the real issue in the case - his flat and completely wrong contention, on page 8, that "the libel of public official on a matter *unrelated to his official conduct* does not come within the rule laid down in *New York Times v. Sullivan.*"

Despite Respondent's present argument, we quote the concession Respondent made on page 17 of his written brief before the Supreme Court of Florida:

> "This decision (Time v. Hill (1967) 385 U.S. 374) clearly shows that the United States Supreme Court is granting a privilege under the First Amendment to the United States Constitution when the article is directed to official conduct, official duties, public issues, *matters of public interest,* and public affairs."

It is a matter of public interest. The fact that the plaintiff is a public official or public figure helps determine the extent of public interest. And when Respondent alleged and proved the public applied the story to him *as* Mayor and *as* a candidate for public office, and he sought and recovered damages for *loss of the elections occasioned thereby,* he is *estopped* to deny the public interest in the story. An indictment for perjury in a civil rights case - particularly in a Florida rural county in 1966 - was a matter of real public interest.

On March 5, 1970, the Florida Circuit Court for Dade County, Crawford, J. (*not* in the First District Court of Appeal district) in granting the news media summary judgment in a libel suit for falsely accusing plaintiff of being "bankrupt", held:

> "Clearly, the *New York Times* doctrine applies to a situation such as that here, for not only was the plaintiff the alter ego of its principal officer and controlling stockholder, Louis Wolfson, who was very definitely a public figure, but *the matter was one of wide public interest.* See All Diet Foods v. Time (N.Y. 1968) 290 N.Y.S.2d. 445, applying the doctrine to a *food store;* Bon Air v. Time (S.D.Ga.1969) 295 Fed.Supp. 704, ap-

plying the doctrine to an *old hotel;* Altoona v. Dun & Bradstreet (W.D.Pa.1968) 286 Fed.Supp. 899, applying the doctrine to a *corporation* suing for damage to its credit; Fotochrome v. New York Herald Tribune (N.Y. Sup.Ct.1969) 61 Misc.2d.226, a case on almost all fours with that here, where the doctrine was applied to a news story about the financial standing of the plaintiff *corporation* and where the paper got its erroneous data from reliable sources; United Medical v. C.B.S. (C.A.-4, 1968) 404 Fed.2d. 706, where the doctrine was applied to a medical *laboratory,* certiorari denied at 394 U.S. 921; Time v. McLaney (C.A.Fla.1969) 406 Fed.2d. 565, certiorari denied at 395 U.S. 922, on a holding that the doctrine applied to a matter of *public interest;* and Rosenbloom v. Metromedia (C.A.-3, 1969) 414 Fed.2d. 892, where again the doctrine was applied to a matter of *public interest.* In all cases, judgments were entered for the defendant news media."

> Merritt-Chapman & Scott Corporation vs. Associated Press, Florida Publishing Company, et al. (Fla.C.C.,1970) 33 Fla. Supp. 102 (Advance Opinion Sheet).

This holding, in our judgment, not only correctly states the law but is in accord with Respondent's statement in his Florida Supreme Court brief, page 17, above quoted.

Respondent admitted in his brief before the Florida Supreme Court that the Federal doctrine applies to "matters of public interest". But now he rests his entire case on his flat assertion that when a *"public official"* is involved, the doctrine is limited to *"official conduct"*. How can that be?

A matter may be of public interest. But if plaintiff happens to be President Nixon, or Senator Jones, or Governor

Kirk, or Mayor Damron, or candidate for County Tax Assessor Damron, that *increases* the public interest - not *eliminates* the applicability of the Federal rule.

Respondent on page 6 of his brief makes the further erroneous statement that this Court "has *not* commingled the rules laid down by this Court on public officials with the rules on public figures."

This is the same false reasoning applied by the District Court of Appeal. Both Respondent and the court below have completely overlooked the fact that later cases have expanded the original holding. Just as the doctrine is not confined to "official" conduct of a public figure, nor does it require "official conduct" to make it a matter of "public interest", the doctrine is not so confined in the case of a public official.

As stated in *Garrison* v. *Louisiana* (1964) 379 U.S. 364, the doctrine extends to "private reputation as well as public reputation" and "anything which might touch on an official's fitness for office is relevant."

When Plaintiff-Respondent sues, says he is a public official and candidate for public office, that the public applied the story to him in that capacity, that he lost the elections because thereof, and he asks for specific damage to him as a public figure, he cannot then say the Federal rule does not apply. He has made his own bed (by his pleadings and proof) and he must lie in it.

Respondent himself injected the Federal doctrine into the case. He cannot have his cake and eat it too.

CONCLUSION

Respondent was much in the public eye. He was a constant actor on the public stage.

He sought to continue as Mayor. He left his business with his brother James, and was almost a full-time candidate for another public office, County Tax Assessor.

Respondent sought and received much publicity. He kept a scrap book (TT. 9). It was because of all this publicity that the area editor knew of Respondent, and automatically used his name instead of his brother James.

In Respondent's libel suit he claimed damages for loss of the elections, and for loss of public standing.

This is the very situation the Federal rule was intended to cover.

In the famous words of our former President:

"If you can't stand the heat, stay out of the kitchen!"

We respectfully submit the Court should grant the writ and reverse summarily the judgment below, as it did in *Beckley*, supra.

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Attorneys for Petitioners.

April, 1970.

FILE COPY

FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ~~1378~~ 118

OCALA STAR-BANNER COMPANY, ET AL.,

PETITIONERS,

vs.

LEONARD DAMRON,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

Granted May 4, 1970

BRIEF OF PETITIONERS

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Supreme Court of the United States

OCTOBER TERM, 1969

No. 1373

OCALA STAR-BANNER COMPANY, ET AL.,

PETITIONERS,

vs.

LEONARD DAMRON,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

Granted May 4, 1970

BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the District Court of Appeal, First District, State of Florida, is reported at 221 So.2d. 459 (A. 18). The opinion of the Florida Supreme Court refusing to review said decision (SC #8)[1] is reported at 231 So.2d. 822. (A. 21)

NOTE 1: We refer to Trial Clerk's certified record (Volume I) as "R"; to the Court Reporter's separate volumes of trial transcript (Volumes II and III) as "TT"; to the record volume in the District Court of Appeal (Volume VI) as "DC"; and to the volume covering the record in the Florida Supreme Court (Items 6-15) as "SC".

We refer to pages in the printed Appendix in this Court as "A".

JURISDICTION

The judgment of the District Court of Appeal, First District, State of Florida (A. 18), under review here, dated and entered on April 22, 1969 (DC #1) is reported at 221 So.2d. 459. The judgment was made final by an Order of the Supreme Court of Florida dated and entered February 20, 1970 (SC #11) refusing to rehear its Order-Opinion of January 21, 1970 (A. 21) (SC #8) dismissing the case for alleged lack of jurisdiction. The Florida Supreme Court had first, in July, 1969, *denied* motion to dismiss the appeal for want of jurisdiction (SC #7) and set the case down for oral argument on the merits.

Under these circumstances, the Writ of Certiorari runs to the District Court of Appeal, First District, State of Florida.

It was necessary to first seek review by the Florida Supreme Court before filing Petition for Certiorari in this Court. See *Banks v. California* (1969) 395 U.S. 708. The question of procedure was covered in our Petition and Supplemental Brief.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257. The judgment of the Florida District Court of Appeal violates the rights of petitioners guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

This Court granted Certiorari by its order of May 4, 1970.

QUESTIONS PRESENTED

1. Does a libel judgment against newspaper Petitioners in favor of Respondent Mayor and candidate for County Tax Assessor (primarily covering damages for loss of election) deprive Petitioners of their Constitutional rights where the

record contains no evidence of (or even consideration given to necessity for) actual malice as defined by this Court?

2. Does the State Court's instruction to a jury (affirmed by the District Court of Appeal) that it must return a libel verdict against Petitioners in favor of Respondent Mayor and candidate for County Tax Assessor without any regard for actual malice, as defined by this Court, deprive Petitioners of their Constitutional rights?

These are the identical questions stated in the Petition on which this Court has granted Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States
Amendment I:

> "Congress shall make no law . . . . . abridging the freedom of speech or of the press . . . . . "

Amendment XIV:

> ". . . (N)or shall any State deprive any person of life, liberty, or property, without due process of law . . . . ."

STATEMENT OF THE CASE

This case is distinguished by Respondent's own self-affixed label.

It is a classic situation for application of the *New York Times* rule. Respondent Leonard Damron, by his *pleadings and testimony*, brought himself squarely within the Federal Rule. He himself tagged the alleged libelous story as on a matter of general public interest. He asserted that he was

Mayor and a candidate for County Tax Assessor; that he had lost the election for each office when the electorate applied the news story to him in his public figure capacity. He sought damages for loss of public office.

Yet the Trial Court *directed* a verdict for him on liability (A. 80-83) without reference to or regard for "malice". Judgment was entered on the verdict. (A. 14, 19)

The time involved was April, 1966, at the height of the civil rights controversy, particularly in the South. The locale was Citrus County, Florida (population 9268 - 1960 U. S. Census) in the rural South. Perjury, civil rights and election campaigns were all matters of great public interest.

Respondent was a small town politician and garage man. He was Mayor of the Town of Crystal River (population 1523), and a candidate to succeed himself. He also sought the paid job (at $9,000 per year) of County Tax Assessor. Respondent left his garage in the hands of his brother, James, while Respondent "politicked" almost full time for County Tax Assessor. Respondent had no qualifications as a real estate broker or appraiser but ran "as a citizen and voter". (TT. 44, A. 49). He ran last in a three-man race. (A. 37)

There was no daily or even bi-weekly newspaper in Crystal River or Citrus County, but Respondent kept a scrap book of his clippings from the daily Ocala Star-Banner (published in nearby Marion County). (TT. 9, A. 27)

James Damron was indicted for perjury in a civil rights case. Petitioners' reporter Ware telephoned the story in to Petitioners' area editor Meier, a newcomer to central Florida, and only on the job for slightly over a month. Meier did not know either brother but had run numerous articles in his short time at Ocala about Leonard Damron's involvements in public controversies. Accordingly, while Ware telephoned

in the correct name (James Damron), Meier ran a story using the name Leonard Damron, the only Damron of whom he knew. Meier had never met Respondent but because of his involvement in public affairs, and the *publicity* sought and received by Respondent, Meier automatically assumed it was Leonard Damron and used that name. (Corrections were run immediately).

Such a judgment against Petitioners is the very thing *New York Times* sought to prevent. If a judgment will stand based on this type of good faith error, the Federal doctrine is meaningless. Mere negligence or oversight is *not* "calculated intent to harm through falsehood."

We discuss the facts hereafter with record and appendix references.

Libel Complained Of

The complained-of story published in the Ocala Star-Banner, as alleged in paragraph 3 of Respondent's complaint (A. 6), was:

> "A case charging local garage owner *Leonard Damron with perjury*[2] was passed over for the present term of Federal court after Damron entered a not guilty plea before Judge Harrold Carswell in Gainesville . . . . . ". (R. 1, 2 – See A. 8 for complete story).

NOTE 2: Emphasis here and elsewhere added by counsel unless otherwise indicated. Respondent emphasizes that he was not called a "public figure" or "public official". But in his complaint he specifically alleged the public-figure capacity and that he lost the election because of it. Meier, the area editor, infra, thought it was the public figure and that is the reason he used Leonard's name.

Respondent Alleged Public Figure Damages

Respondent did not file his suit in Citrus County where his alleged damages arose and where he was well known. He filed it in Marion County.

Respondent alleged in paragraphs 6, 9, 10 and 11 of his complaint (R. 2, 3 - A. 6, 7) on which he went to trial, that he was a *public figure and sustained damages in that capacity* as follows:

> "6. That the Plaintiff is and was on April 18, 1966, *a public officer, being elected to the office of Mayor of Crystal River, Citrus County, Florida, and on said date was a candidate for the office of Tax Assessor for Citrus County, Florida,* and was and is a businessman in said Town and County, owning and operating a garage. The plaintiff, Leonard Damron, is the only garage owner by the name of Leonard Damron doing business in the Marion, Citrus, Levy and Sumter County area."
>
> * * * * *
>
> "9. That the aforesaid article published on April 18, 1966, by the Defendants, set forth as Plaintiff's Exhibit "A", was published at a time and in a newspaper in general circulation in an área where *voters* resided who would cast their votes in a democratic primary on May 3, 1966, in which primary the *Plaintiff was a candidate* for the office of Tax Assessor of Citrus County, Florida, opposing two other candidates. That *throughout the remainder of the political campaign,* from April 18, 1966, the Plaintiff was repeatedly required to answer questions regarding the charges against him of perjury purportedly pending, and that although the Plaintiff fervently denied such charges and endeavored to make

it known that the statements printed in said article were false, he has been unable to remove the damage to his reputation caused by said article."

"10. That the Plaintiff continues to hold the office of *Mayor* of the Town of Crystal River, Citrus County, Florida, having been duly elected to said office prior to the publication of the said article attached hereto as Plaintiff's Exhibit "A," and Plaintiff *desires to continue to hold this office for which he will be required to campaign* and run for re-election in December of 1966, and overcome the false and defamatory statements in said article that Defendants have caused to be published, which continue to create doubt and suspicion in the mind of the people of Citrus County, Florida, as to the integrity of the Plaintiff."

"11. Because of the actions of the Defendants in the publication of the aforesaid article as attached hereto as Plaintiff's Exhibit "A", the plaintiff has suffered irreparable damages to his reputation, as an individual, *public officer, candidate for public office* and as a businessman." * * * * *

Thus, Respondent expressly alleged his case to come within the purview of the Federal Constitutional Law of Libel, a factor not considered in the District Court opinion. Respondent made his own bed and must lie in it. His own complaint shows the public interest.

Petitioners moved to *dismiss* the complaint since it failed to allege that the publication of the article was made "maliciously" and also failed to allege "wantonness, recklessness or carelessness". (R. 7, A. 10)

Petitioners further moved to *strike* the first two clauses of the first sentence of paragraph 6, and also paragraphs 9 and

10, all quoted above, and claiming "*public figure*" damages. (R. 8, A. 10)

Petitioners further moved to strike the portion of paragraph 11, "alleging damages to plaintiff's reputation either as a *public officer or as a candidate for public office.*" (R. 8, A. 10)

All of Petitioners' above motions were denied. (R. 9, A. 11)

Directed Verdict at Trial Upheld

Answer was filed denying the material allegations (R. 10, A. 12) specifically denying malice (A. 14), and the case went to trial. At the trial, the jury was given no instructions on "express malice". Instead, it was instructed that since the publication charged the crime of perjury, this was libel per se, malice was imputed or presumed, no proof of malice was required, and the only question was the amount of damages (TT. 301, 303, 305, 306, 307, A. 80-83), including damage to Respondent as a "*public official*". (TT. 304, A. 82). As stated in the District Court opinion "a *directed verdict* on the question of liability was granted." (A. 19)

The jury failed to find punitive damages. It did bring in a verdict for $22,000.00 compensatory damages. (R. 18, 19, A. 14)

Motion for new trial was filed emphasizing that the evidence was insufficient to satisfy the Constitutional rule. (R. 20, 21, A. 15)

The Court denied the motion (R. 22, 23, A. 17), the District Court of Appeal affirmed, and the Florida Supreme Court, after briefs and oral argument, dismissed appeal for alleged want of jurisdiction after it had *first* held it did have jurisdiction and had denied motion to dismiss appeal for want of jurisdiction.

The District Court opinion (A. 18) erroneously construed the First Amendment as not requiring proof *or* allegation of "express malice" in the case of public figure Damron so suing for public figure damages on a matter of public interest. It erroneously construed the First Amendment as follows:

> ". . . . . Our impression is that it is the public officer's *official conduct* or the manner in which he performs his duties that affords the media a wide latitude for comment. It is the plaintiff officer's *performance of duty* that is so affected by the public interest which justifies the protection from libel actions afforded by the *New York Times* doctrine in the absence of proof of malice. . . . . The plaintiff's official conduct or the manner in which he performed his duties were not the basis for the inaccuracy here involved; and hence, it does not come within the protection afforded by the rule announced in the *New York Times* case. It follows, therefore, that the trial judge correctly held that it was unnecessary for the plaintiff to show malice." (A. 20)

It is this dangerous, utterly erroneous, and completely misleading language that will cause the Federal Constitutional Law of Libel to be almost meaningless in Florida (and particularly in the First District) until this opinion is reversed and comes out of the case books.

SUMMARY OF ARGUMENT

1. Not only did Respondent plead and claim public figure damages, but the evidence at the trial clearly showed that the real issue was Respondent's public figure damages, i.e., the alleged loss of the elections, and that the story was on a matter of public interest.

2. The decision of the Florida District Court of Appeal that the Federal Constitutional Law of Libel was limited to "official conduct" or performance of duty" is a flat rejection of the rulings of this Court. The rule applies as well to a public figure (like Respondent), to a candidate (like Respondent), to the fitness and qualifications of an official or candidate (like Respondent), and to a matter of public interest (like that here involved).

3. Respondent's argument that the federal doctrine does not apply because Respondent was not referred to in the story as "Mayor" or "candidate" is not tenable. Under the pleadings and the evidence, Respondent elected to claim the article was on a matter of public interest and that the voters applied the article to him in his public figure capacity.

He alleged and proved damages for loss of elections and injury to him as Mayor and candidate for public office. The real test of the doctrine is the public interest.

4. This Court has repeatedly delineated the Federal Constitutional Law of Libel to show that the public interest is the vital test.

5. Respondent has made his own bed and must lie in it. Having claimed "public figure damages" and predicated his entire case on the public interest, it is now too late to say that the Federal doctrine does not apply.

6. The Florida court incorrectly construed the Federal Constitutional Law of Libel. And Respondent's argument in his Brief in Opposition to Certiorari shows that he likewise has misconstrued the breadth and full effect of the Federal rule.

7. Respondent Plaintiff's testimony is reproduced in full in the Appendix (A. 26-60). Also reproduced is everything

else designated by Respondent. It shows a complete absence of "proof of convincing clarity" of a "calculated intent to harm through falsehood". The error was an innocent one (by a newcomer to the area) who confused two brothers, in a story on a matter of public interest. This Court should order the court below to enter up judgment for Petitioners.

ARGUMENT

1. Evidence at the Trial

There was no dispute but that the Petitioners erroneously published that Respondent had been indicted for perjury rather than his brother, James Damron (who was running Respondent's business while Respondent campaigned - TT. 33, A. 42)

As above stated, on April 18, 1966, Petitioners' Area Reporter Ware telephoned in a story with respect to a Damron being charged with perjury in Federal Court in a civil rights case, a matter of public interest (TT. 163, A. 75) (R. 6, A. 5). The story was telephoned in to Petitioners' Area Editor Meier who had only been in the Ocala area for a few days over a month (TT. 153, A. 73), and who did not know Damron except by his reputation as a public figure (TT. 171, A. 76). Damron was so much in the public eye that numerous stories had been in the paper about him, handled by Meier (TT. 164, A. 76). Although the reporter says she telephoned in the correct name, Meier thought they were talking about Respondent, the public figure, about whom he had published so many prior stories. Accordingly, he automatically wrote down and used in the story the name of Leonard Damron rather than the name of Respondent's brother, James Damron (TT. 163, A. 75)

It being conceded that Petitioners had published the story and made the error (albeit an innocent one, free of malice), Respondent based his case almost entirely on his *public figure* damage.

At TT. 9, A. 27, Respondent testified:

> "I have been Mayor for four terms --- well, I kept a scrap book (Ocala Star-Banner articles) and to where I could always refer back to my activities as Mayor and all the other civic organizations I belong to."

At TT. 12, A. 29, he said:

> "I felt like it (the publication) had ruined me – I was running for Tax Assessor at that time and I had already covered probably two-thirds of the county from door to door, with political speeches, and running ads in the newspapers and I was so upset – I called you (plaintiff's attorney) and asked for your advice – and wrote the Ocala Star-Banner a letter - "

At TT. 13, A. 30, Respondent read to the jury *his* published letter to the Ocala Star-Banner,[3] from which we quote:

> "You are advised that the undersigned Leonard Damron has never been charged with the crime of perjury, is presently Mayor of the Town of Crystal River, and is presently a candidate for Tax Assessor of Citrus County, Florida."

NOTE 3: Petitioners not only published Respondent's letter (TT. 192) but upon the error being discovered, they had previously on their own volition run a correction and retraction the day after the error appeared (TT. 155-6, A. 74). As stated by Petitioner Publisher: "We ran three corrections on two different days." (TT. 194). In interrogating the Publisher before the jury, Respondent's counsel once again emphasized that Petitioners *knew* that, and Respondent *was*, "a public offic holder" and "*was also* a candidate for Tax Assessor of Citrus County, Florida" (TT. 193).

At TT. 192, Respondent's counsel had another witness again read to the jury his exact above letter as to his public figure status.

We further quote from the trial transcript:

"Q. Immediately after the publication of this article, what was the reaction of people to you from whom you would *solicit votes*?

A. Very cold." (TT. 24, A. 36)

* * * * *

"Q. Were you able to overcome the effect of this publication on your candidacy as Tax Assessor?

A. No, sir.

Q. What was the result of the election?

A. I got beat." (TT. 24, 25, A. 37)

* * * * *

"Q. Now, then, Mr. Damron, as to the office of Tax Assessor for which you were running, do you know what the annual compensation is in that office?

A. $9,000.00 a year." (TT. 28, A. 39)

"Q. After this publication of the article, did you run again for the office of Mayor of Crystal River?

A. Yes, sir." (TT. 26, A. 38)

* * * * *

"Q. What, if any, voter opposition did you meet in campaigning for this office in the year 1966 that you did not meet in prior years?

A. The vote was . . . . . the public was a little cooler . . . . . they wasn't as friendly . . . . ." (TT. 27, A. 38)

Respondent testified he was *defeated for Mayor* by 28 votes the last time (TT. 50, A. 52).

Respondent's twelve witnesses repeatedly testified on the alleged bad effect Petitioners' publication had on the voting public and Respondent's chances for election. (TT. 66, (A. 61), 68, (A. 61), 94, (A. 64), 105, (A. 65), 109, (A. 66), 117, (A. 67), 123, (A. 67), 129, (A. 68), 140, (A. 69). Not one of them testified to (a) any express malice, or (b) any monetary damage other than *loss of public office and campaign contributions.* (TT. 68, A. 61)

As indicated, Respondent's complaint did not allege that Petitioners published the statement about Respondent with actual malice as defined by this Court. For this reason, Petitioners moved to dismiss the complaint and to strike allegations as to public figure damages therefrom, prior to trial. The trial record does not contain a scintilla of evidence that Petitioner's story was written with actual malice as defined by the Court. Far from proof of "convincing clarity", there was no evidence at all of express malice. Nonetheless, the Court *directed a verdict for the Respondent* on the erroneous assumption that a charge of perjury "was libelous per se" (TT. 303, A. 82), there "must be a finding in favor of plaintiff" (TT. 301, A. 82), and that Respondent was entitled to *compensation* for "injury to his reputation as a citizen and *public official*". (TT. 304, A. 82)

2. Lower Court Ruling Is Flat Repudiation of This Court

The opinion of the District Court of Appeal (A. 18) is a flat repudiation of the rulings of this Court.

The ruling of the Florida Court applies the Federal Constitutional Law of Libel *not* to public figures, candidates, and matters of public interest, as held by this Court. Instead, it limits the doctrine to Respondent's "*official* conduct or the manner in which he performed his *duties*".

Even Respondent's own counsel finally recognized that this was erroneous, and we quote from page 17 of Respondent's brief before the Supreme Court of Florida:

> "This decision [Time v. Hill (1967) 385 U.S. 374] clearly shows that the United States Supreme Court is granting a privilege under the First Amendment to the United States Constitution when the article is directed to official conduct, official duties, public issues, *matters of public interest,* and public affairs."

The trial court directed a verdict on the ground that the *New York Times* doctrine had no application here since the story did not *specifically* refer to Respondent as a *public official* or to his *official conduct.* The Florida Court utterly ignored in this case that the Constitutional protection goes much beyond official conduct and performance of official duties, and extends to matters of public interest. Especially is this true when Respondent's entire case is bottomed on the damage that he sustained when he was defeated for election as County Tax Assessor and was later defeated for re-election as Mayor.

Newly-arrived Area Editor Meier thought it was the public figure involved in the indictment for perjury, and he wrote the story about the public figure. Respondent said that the public applied the story to Respondent in his public figure capacity and that is the reason he lost the votes in the election.

It is our clear recollection that it was stated by counsel for both sides in oral argument before the Supreme Court of Florida that they understood the $22,000.00 verdict was made up of two years' salary as County Tax Assessor at $9,000.00 per year, plus $4,000.00.

Petitioners were deprived of their Constitutional rights because the Florida Courts limited the Constitutional rule to *official conduct* of a *public official.*

Respondent cannot have his cake and eat it, too. He cannot recover public figure damages without being subject to the *New York Times* rule of public figure damages. The rule applies to matters of public interest.

3. Respondent's Argument Not Tenable

Respondent asserts that the story did not in so many words refer to Respondent as "Mayor" or as "candidate for County Tax Assessor, or as "a public figure". The District Court opinion emphasized this.

It is apparently Respondent's theory that a story charging "President Richard Nixon" with perjury comes under the Federal rule. But the same story charging only "Richard Nixon" does not, even though "public figure" damages are specifically sought.

Suppose Respondent had been referred to as "Mayor". Could he still recover damages as a candidate for County Tax Assessor without complying with the Federal rule?

To state the proposition is to demonstrate its absurdity. Mr. Nixon and Respondent are each "a public figure", in his own sphere, regardless of how he is designated.

If they seek "public figure damages", they come under the "public figure rule".

The Federal doctrine did originally apply on its face to "official conduct of public officials". The District Court of Appeal simply did not realize that it has successively been *extended* to "candidates", to mere "public figures", and to "matters of public interest".

Obviously, there can be no "official" conduct of a public figure. Walker was not engaged in official conduct in the *Associated Press* case. As stated at 338 U.S. 154, Walker "commanded a substantial amount of public interest at the time of the publication", just as did the Mayor of Crystal River, Florida, and candidate for County Tax Assessor, in his area. It was because of Damron's public figure activities and the interest the public had in him that Meier (who did not know Respondent) thought it was Respondent who was involved and therefore wrote the story about Respondent. Had Respondent not been a public figure his name would not have been known to Meier and would never have been used.

Wally Butts was a football coach employed by a corporation, and Edwin Walker was a private citizen. Butts was accused of fixing football games -- Walker of leading a riot. See *Curtis Publishing Company v. Butts*, infra.

What "official conduct of a public official", as the doctrine is limited by the Florida District Court of Appeal, was involved in either case?

It is not necessary to designate "Richard Nixon" in so many words as a "public figure" or "President" or as "a man in the public eye" to make him a public figure. The test is whether he actually is a public figure or whether we have a matter of public interest. The same thing applies here.

Here, Respondent *removed any doubt.* He not only specifically alleged he was "Mayor" and "candidate for County Tax Assessor" in his complaint, but claimed he was "harmed with the electorate" and actually lost both offices because of the article. How could there be any clearer application of the *Curtis Publishing* and *Garrison* cases, infra, which prevent public figures from collecting damages (either to their

public or personal reputations) without proving "calculated falsehood"? But the words "public figure" or "matter of public interest" do not appear once in the District Court opinion. So far as the District Court was concerned, *Time*, *Curtis Publishing*, *Garrison*, and *Associated Press* were never enunciated by the United States Supreme Court.

The public and private reputation damages are inextricably mixed in the verdict, and *Garrison*, infra, holds that private reputation damages come under the Federal rule once public reputation is damaged.

We repeat, Respondent cannot have his cake and eat it, too. When Respondent decided to claim the public and the electorate applied the news story to him as Mayor and candidate for County Tax Assessor, he himself invoked the Federal rule. He asserted he was a public figure and had been damaged as a public figure.

The District Court opinion shuts its eyes to this paramount and overriding factor which Respondent himself elected to inject into the case, and on which he sought and recovered public figure damages, i. e., the application by the voting public of the alleged libel to plaintiff in his public figure capacity and his consequent loss of his political races. It was a matter of public interest.

The District Court opinion is erroneous, dangerous and misleading.

In the *New York Times* case, in *Butts*, in *Walker*, and in *Hill*, all cited infra, as well as in the case presently before the Court, the function served by the First Amendment was to provide the public with information on matters in which it had a legitimate and substantial interest. If the plaintiff in a particular case occupies a position of some "public" status,

the public may have a legitimate and substantial interest in statements about him solely for that reason. But this would merely be an incidental aspect of the broader base of the First Amendment protection, the right to inform the public on matters of legitimate public interest, not the basis for a mechanically restrictive rule.

The story here was on a matter of public interest because of the indictment in a civil rights case for perjury. Even if it had not related to a public figure, the newspaper had a right to run a story on a matter of public interest, i.e., federal indictment of a business man for *civil rights perjury*.

4. Federal Constitutional Law of Libel

There is no need to repeat in detail to this Court what it has said so many times. Plaintiff in any libel action to which the Constitutional rule applies (and this includes stories about public officers, candidates for public office, public figures, and matters of public interest) must prove "actual malice" with "convincing clarity". "Actual malice" means "actual knowledge of falsity" or "recklessness". *New York Times v. Sullivan* (1964) 376 U.S. 254.

"Recklessness" means "a high degree of awareness of probable falsity". *Garrison v. Louisiana* (1964) 379 U.S. 364.

"Intent to harm" does not suffice. There must be "intent to harm through falsehood". *Henry v. Collins* (1965) 380 U.S. 356.

"Failure to investigate" does not impair the privilege. *Beckley v. Hanks* (1967) 389 U.S. 81; *New York Times*, 376 U.S. 287-288; *Time*, 385 U.S. 374, 388-389; *Curtis Publishing*, 388 U.S. 153-154.

"Recklessness" also means "serious doubts as to truth". *St. Amant v. Thompson* (1968) 390 U.S. 727.

And in the case of a public figure, the doctrine covers *private reputation* as well as *public reputation*. "To this end, anything which might touch on an official's *fitness for office* is relevant. Few personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character." *Garrison*, supra, 379 U.S. at page 77.

The Constitutional test has thus been established by the Supreme Court beyond doubt.

Public interest had been the basis for the holdings in *New York Times* (page 269) and *Garrison* (pages 74-5), even though the actual holding in those cases was limited to public officials. It was also the basis for the holding in *Rosenblatt v. Baer* (1966) 383 U.S. 75, 84-6. It was the direct holding in *Time v. Hill* (1967) 385 U.S. 374. It was likewise the basis for the holding in *Curtis Publishing Company v. Butts* (1967) 388 U.S. 130, 150-2, which case extended the doctrine to *public figures*.

Recognizing that the public interest in the statements at issue was the basis for the grant of constitutional protection in the *New York Times* case, in *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964), in *Butts*, 388 U.S. at 150-152, and in *Walker*, 388 U.S. at 155, and the clear holding of this Court in *Time, Inc. v. Hill*, 385 U.S. 374, 387-388, both the Court of Appeals for the Ninth Circuit and the Court of Appeals for the Fifth Circuit have explicitly recognized the inevitable applicability of the public interest test in a defamation context. In each case, this Court denied certiorari. See *Time, Inc. v. McLaney*, 406 F.2d. 565 (5th Cir. 1969), cert. denied,

395 U.S. 922 (1969) involving a gangster; and *United Medical Laboratories, Inc. v. Columbia Broadcasting System,* 404 F.2d 706 (9th Cir. 1968), cert. denied, 394 U.S. 921 (1969) involving a medical laboratory. Other courts have also recognized that the "public official" and "public figure" cases in this Court were but specific applications of the broader constitutional principles upon which those decisions are founded, and consequently have not viewed the status of the plaintiff as critical but have accepted and applied the public interest or issue basis for application of the First Amendment privilege. See *Bon Air Hotel, Inc. v. Time, Inc.* 295 F.Supp. 704 (S.D. Ga. 1969), affirmed by C.A. 5, May 6, 1970, ... F.2d. ....., concerning an *old hotel; All Diet Food Distributors, Inc. v. Time, Inc.*, 290 N.Y.S. 2d. 445 (N.Y. Sup. Ct. 1967), involving a *food store; Fotochrome, Inc. v. New York Herald Tribune, Inc.* (Sup. Ct. of N.Y. 1969) 61 Misc. 2d. 226, involving a *corporation; Farnsworth v. Tribune Company* (Sup. Ct. of Ill. 1969) 253 N.E. 2d. 408, involving a *doctor; Wasserman v. Time* (C.A.D.C., March 3, 1970) ..... F.2d. ....., involving a Mafia *attorney;* and *Merritt-Chapman & Scott Corporation v. Associated Press, et al.,* (C.C. Fla. 1970) 33 Fla. Supp. 102, involving a *corporation's* financial difficulties. These cases all conform to the principles and analysis announced by this Court.

5. Respondent Has Made His Own Bed

The newspaper under the First Amendment had the right to report stories of public interest, which would include the indictment for perjury in a civil rights case. But if there had been any doubt as to the First Amendment applicability, Respondent removed all doubt by his pleadings and proof of public interest and public figure damages.

Here we had a small rural county with not even a daily

or bi-weekly newspaper of its own. The time was April, 1966, *at the height of the civil rights controversy* and in the midst of an election campaign. News Editor Méier erroneously (but without malice) understood that it was the Mayor and candidate for County Tax Assessor who had been indicted for perjury in a civil rights case, and wrote the story about him. Then, to remove any doubt, Respondent plaintiff filed his suit, alleged that he was Mayor and candidate for County Tax Assessor, that the public applied the story to him in that public figure capacity, that he was damaged "as a public official, candidate for public office . . . . . ", and that he lost the elections for County Tax Assessor and for re-election as Mayor. Notwithstanding Respondent predicated his case on the public figure angle, and his testimony was almost exclusively on that alleged damage, the Court did not even let the jury consider the question of malice. Instead it told the jury that the only question was how much money Respondent was entitled to, and that his damages expressly included damage to him as a "public official."

Respondent has made his own bed and must lie in it.

6. Florida Court Incorrectly Construed Federal Law

Respondent devotes only two full pages of his brief in opposition to certiorari to the real issue in the case - his flat and completely wrong contention, on page 8, that "the libel of public official on a matter *unrelated to his official conduct* does not come within the rule laid down in *New York Times v. Sullivan.*"

Among other things, he failed to consider qualifications and fitness for public office, and the matter of public interest.

Despite Respondent's present argument, we quote again the

concession Respondent made on page 17 of his written brief before the Supreme Court of Florida:

> "This decision (Time v. Hill (1967) 385 U.S. 374) clearly shows that the United States Supreme Court is granting a privilege under the First Amendment to the United States Constitution when the article is directed to official conduct, official duties, public issues, *matters of public interest,* and public affairs."

Is is a matter of public interest. The fact that the plaintiff is a public official or public figure helps determine the extent of public interest. And when Respondent alleged and proved the public applied the story to him *as* Mayor and *as* a candidate for public office, and he sought and recovered damages for *loss of the elections occasioned thereby,* he is *estopped* to deny the public interest in the story. An indictment for perjury in a civil rights case - particularly in a Florida rural county in 1966 - was a matter of real public interest.

On March 5, 1970, the Circuit Court for Dade County, Florida, Crawford, J. (*not* in the First District Court of Appeal district) in granting the news media summary judgment in a libel suit for falsely accusing plaintiff *corporation* of being "bankrupt", held:

> "Clearly, the *New York Times* doctrine applies to a situation such as that here, for not only was the plaintiff the alter ego of its principal officer and controlling stockholder, Louis Wolfson, who was very definitely a public figure, but *the matter was one of wide public interest.* See All Diet Foods v. Time (N.Y. 1968) 290 N.Y.S.2d. 445, applying the doctrine to a *food store;* Bon Air v. Time (S.D.Ga.1969) 295 Fed.Supp. 704, applying the doctrine to an *old hotel;* Altoona v. Dun & Bradstreet (W.D.Pa.1968) 286 Fed.Supp. 899, applying

the doctrine to a *corporation* suing for damage to its credit; Fotochrome v. New York Herald Tribune (N.Y. Sup.Ct.1969) 61 Misc.2d.226, a case on almost all fours with that here, where the doctrine was applied to a news story about the financial standing of the plaintiff *corporation* and where the paper gots its erroneous data from reliable sources; United Medical v. C.B.S. (C.A.-4, 1968) 404 Fed.2d. 706, where the doctrine was applied to a medical *laboratory*, certiorari denied at 394 U.S. 921; Time v. McLaney (C.A.Fla.1969) 406 Fed.2d. 565, certiorari denied at 395 U.S. 922, on a holding that the doctrine applied to a matter of *public interest;* and Rosenbloom v. Metromedia (C.A.-3, 1969) 414 Fed.2d. 892, where again the doctrine was applied to a matter of *public interest.* In all cases, judgments were entered for the defendant news media."

> *Merritt-Chapman & Scott Corporation vs. Associated Press, Florida Publishing Company, et al.* (Fla.C.C.,1970) 33 Fla. Supp. 102 (Advance Opinion Sheet).

In *Merritt-Chapman* there was no public official and no official conduct.

This holding, in our judgment, not only correctly states the law but is in accord with Respondent's statement in his Florida Supreme Court brief, page 17, above quoted.

Respondent admitted in his brief before the Florida Supreme Court that the Federal doctrine applies to "matters of public interest". But now he rests his entire case on his flat assertion that when a *"public official"* is involved, the doctrine is limited to *"official conduct"*. How can that be?

A matter may be of public interest. But if plaintiff happens to be President Nixon, or Senator Jones, or Governor

Kirk or Mayor Damron, or candidate for County Tax Assessor Damron, that *increases* the public interest - not *eliminates* the applicability of the Federal rule.

Respondent on page 6 of his brief in opposition to certiorari made the further erroneous statement that this Court "has *not* commingled the rules laid down by this Court on public *officials* with the rules on public *figures*."[4] (Respondent was *both*).

This is the same false reasoning applied by the District Court of Appeal. Both Respondent and the court below have completely overlooked the fact that later cases have expanded the original holding. Just as the doctrine is not confined to "official" conduct of a public figure, nor does it require "official conduct" to make it a matter of "public interest", the doctrine is not so confined in the case of a public official.

Respondent was not only a "public official" (Mayor) but was also a public figure (candidate for County Tax Assessor and for re-election as Mayor) and the story involved an indictment for perjury in a civil rights case - a matter of great public interest.

As stated in *Garrison* v. *Louisiana* (1964) 379 U.S. 364, the doctrine extends to "private reputation as well as public reputation" and "anything which might touch on an official's fitness for office is relevant."

When Plaintiff-Respondent sues, says he is a public official and candidate for public office, that the public applied the story to him in that capacity, that he lost the elections because thereof, and he asks for specific damage to him as a public figure, he cannot then say the Federal rule does not

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NOTE 4: This is direcly contrary to *Greenbelt*, infra, where this Court said: "And the constitutional prohibition in this respect is no different whether plaintiff be considered a public official or a public figure". See also *Associated Press*, 388 U.S. at 163, 164.

apply. He has made his own bed (by his pleadings and proof) and he must lie in it.

Respondent himself injected the Federal doctrine into the case. He cannot have his cake and eat it too.

He it was who said the electorate applied the story and found wanting his qualifications for public office.

7. Judgment Should Be Ordered for Petitioners

As discussed hereinabove, the fundamental concept of actual malice, as enunciated in *New York Times*, requires a public figure plaintiff, such as *Damron* here, to prove "with convincing clarity" that the alleged libel was published "with knowledge that it was false or with reckless disregard of whether it was false or not". (376 U.S. at 280).

Subsequently, in *Garrison v. Louisiana* (1964) 379 U.S. 64, at 67, this Court held that the "recklessness" concept of malice requires a showing of "a high degree of awareness of probable falsity".

Then in *Henry v. Collins* (1965) 380 U.S. 356, this Court held that "intent to harm" is not sufficient. There must be "intent to harm *through falsehood*". See page 357.

In *Beckley v. Hanks* (1967) 389 U.S. 81, the Court confirmed that the failure of the defendant newspaper to make an investigation prior to publication is insufficient to constitute "recklessness".

Lastly, the Court held in *St. Amant v. Thompson* (1968) 390 U.S. 727, at 730, that the concept of recklessness requires a showing by the plaintiff that the defendant "entertained serious doubts as to the truth" of the publication.

Summing it up, the burden was on Respondent-Plaintiff to prove "intent to harm through falsehood", and to do so by

"proof of convicing clarity". In this Respondent-Plaintiff failed completely.

We have printed in the Appendix the complete transcript of Respondent-Plaintiff's testimony (as well as all other testimony relied on or designated by Respondent) to show there was no proof of any kind of a calculated "intent to harm through falsehood", let alone "proof of convincing clarity".

Meier just simply made a *human error* in thinking and writing it was Leonard Damron, the public figure, involved, rather than his brother. He wrote the wrong first name.

Erroneous this may have been, and probably was.

Careless Respondent may think it was.

Negligent it may have been.

But under no circumstances can Petitioners' actions be said to be *malicious*[5] under the Federal Constitutional Law of Libel. Plaintiff, like other candidates and public figures, sought publicity. And such error, in the case of a public figure, and a matter of public interest, is protected by the First and Fourteenth Amendments to the Constitution of the United States unless there be a calculated and deliberate falsehood with intent to harm through falsehood (which there was not here).

Meier (a newcomer to Ocala) had never even met Respondent and only knew *of* him because of his prior participation in public controversies and affairs.

As in *Beckley*, supra, where anti-plaintiff editorials running back to 1960 were introduced, the trial court permitted plain-

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NOTE 5: It is of considerable significance that the jury did not bring in punitive damages where express malice was required (TT. 303, R. 18, A. 82, 14) and where Respondent sought $500,000.00 punitive damages (A. 8). And the Court *directed* a verdict on liability for compensatory damages without regard for malice.

tiff Damron to read into the record three 1965 news stories which he claimed were false. (TT. 16, 17, A. 31). Just as in *Beckley*, these are in no way sufficient to show the requisite proof with "convincing clarity" of any "calculated intent to harm through falsehood". Meier had nothing to do with these 1965 stories (TT. 17, A. 32). He did not become area editor until about a month before the article complained of was published on April 18, 1966 (TT. 153, A. 23). The record shows no complaint by Respondent about any prior article written by Meier.

The first 1965 article said Damron "walked out of a council meeting". (TT. 16, A. 31) While Damron conceded he had differences with the council (TT. 17, A. 32) he denied he had ever physically walked out. The second article (TT. 16, 17, A. 31) said Mayor Damron "had clashes with the council". Respondent said "just because I have disagreed with the council I haven't clashed****" (TT. 17, A. 32) But Respondent stated he had always been opposed by a "click" (sic). (TT. 49-51, A. 52) The third article, Damron said, gave an erroneous figure for the retainer of the City Attorney (TT. 17, A. 32).

Certainly these articles are not a sufficient basis on which a jury could find "express malice". Even if Meier had authored the 1965 articles (which he did not) they appear to us, and we believe this Court will agree, to be rather innocuous.

The attempt of Respondent's Counsel to show malice through these innocuous news stories (TT. 19, A. 23) has no merit.

Even under a proper charge, a jury verdict finding of "actual malice" could not be sustained on this record. The Court stated in *New York Times* that "considerations of effective

judicial administration require" the appellate court "to review the evidence in the present record to determine whether it could constitutionally support a judgment" for the plaintiff. 376 U.S. at 284-285. The Court reiterated the principle that, in cases involving free speech, an independent examination of the record is warranted, 376 U.S. at 285, and proof of actual malice must appear to be of a convincing clear quality, 376 U.S. at 285-286; *Beckley*, 389 U.S. at 83; *Greenbelt*, infra.

In *Beckley*, there was testimony on the record that defamatory editorials were written by employees of the defendant merely because "there was cause on their part to feel there was that possibility". 389 U.S. at 84. Nonetheless, the Court held this to be insufficient to establish the high degree of awareness of probable falsity necessary for a finding of actual malice.

The Court in the *New York Times* case did not consider the charges there involved, which were at least as "inflammatory" as the one in the present case, as evidence of actual malice or reckless disregard of the truth. See *Garrison v. Louisiana*, 379 U.S. at 74; *Washington Post Co. v. Keogh*, 365 F.2d. 965, 970 (D.C. Cir. 1966).

In *St. Amant v. Thompson*, (1968) 390 U.S. 727, plaintiff maintained the defendant had published with no personal knowledge of the facts; relied solely on the affidavit of a source whose veracity was undisclosed by the record; failed to verify with individuals who might have known the facts; proceeded regardless of whether the published statements were defamatory, without considering the consequences; and published believing that there would be no responsibility for the broadcast because it merely restated the views of the source. The Court there held that a jury finding of actual malice could *not* be supported on the record.

In *Greenbelt v. Bresler*, #413, ... U.S. ....., 38 L.W. 4390, this Court on May 18, 1970, reaffirmed the broad sweep of the First Amendment protection of freedom of speech and press. It specifically held, contrary to the flat pronouncement of the Florida District Court of Appeal here, that the "constitutional prohibition in this respect *is no different* whether plaintiff be considered a 'public official' or a 'public figure'", and that it embraced news stories on matters of public interest. In the *Greenbelt* case, the news story dealt with plaintiff real estate developer appearing before a City Council. There was no official conduct of a public official of any kind by plaintiff Bresler.

The lower court libel judgment against the newspaper was reversed because "the jury was permitted to find liability merely on the basis of a combination of falsehood and general hostility." This Court made its own "independent examination of the whole record" to satisfy itself there had not been "a forbidden intrusion on the field of free expression."

Here, the *record would not support* nearly as much as the Supreme Court held in *Greenbelt* to be constitutionally insufficient.

Accordingly, since a reading of the trial transcript shows a complete *absence* of "express malice" - far from "*proof of convincing clarity*" thereof - we respectfully urge this Court to direct the court below to enter up judgment for Petitioners, and end the matter, once and for all.[6]

This is not a case where the constitutional issue was evaded or overlooked. The trial court flatly denied a motion to

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NOTE 6: The publisher testified and there was no dispute but that the newspaper "ran three corrections" after the error was discovered (TT. 194). But even if the newspaper had failed to correct, that is not constitutionally sufficient to constitute evidence of "express malice". See *New York Times v. Sullivan* (1964) 376 U.S. 254,286; *United Medical v. CBS* (CA-9, 1968) 404 Fed.2d. 706,713; and *New York Times v. Connor* (CA-5, 1966) 365 Fed.2d. 567,577. Failure to retract *after* the article is printed cannot show calculated intent to harm through falsehood *existing at the time* the article is printed.

strike the "public figure" damages and damages as "public officer or candidate for office" (A. 10, 11). In denying motion for new trial, the Court expressly (albeit erroneously) held the verdict was "supported by the evidence" and that the "New York Times and subsequent decisions *cited* in defendants' motion for new trial" were "not applicable to this cause of action" (R. 20, 21, A. 15). These grounds were set out at length in the motion. (A. 15).

As stated, the decision of the District Court of Appeal covered solely and only the Constitutional question (A. 18).

For just what purpose the Respondent directed that the Appendix include some Florida procedural rules is hard to understand. Counsel before this Court came into the case *after* the trial, but the *record* shows that no Florida Court referred to or cited any of Respondent's Rules, or gave them as any purported excuse for not deciding the Constitutional question. *In fact,* the trial court and appellate court *did decide that Constitutional question.* Unfortunately, they decided it wrongly. Further, these rules were *not mentioned* in the briefs and arguments in, or the orders of, the Florida Supreme Court.

And as held in *Zwickler v. Koota* (1967) 389 U.S. 241, 249, no possible construction here can "*avoid* or modify *the constitutional question*". Cf. Stern and Gressman on Supreme Court Practice, and cases cited - Fourth Edition, page 127; Williams v. Georgia (1955) 349 U.S. 375, 383.

As stated in *Evans v. Abney,* ..... U.S. ....., 24 L.Ed.2d. 634, 643 (January 26, 1970):

> "No state law or act can prevail in the face of contrary federal law, and the federal courts must search out the fact and truth of any proceeding or transaction to determine if the Constitution has been violated."

The completely erroneous opinion of the District Court of Appeal must be removed from the case books. It is squarely contrary to the First Amendment as spelled out by this Court.

In *Beckley,* this Court reversed outright plaintiff's libel judgment and judgment was subsequently entered up for the newspaper. This was done *even though* objection had not been made in the trial court to improper jury instructions and the newspaper counsel had themselves requested inadequate instructions.

We quote from 389 U.S. at 82, 83:

> However, since it is clear that the jury verdict was rendered upon instructions which misstate the law and since petitioner has properly challenged the sufficiency of the evidence (just as was done by motion for new trial, R. 20, A. 15, in the Damron case) we have undertaken an independent examination of the record as a whole 'so as to assure ourselves that the judgment does not constitute forbidden intrusion on the field of free expression'. ***** It cannot be said on this record that any failure of petitioner to make a prior investigation constituted proof *sufficient to present a jury question* whether the statements were published with reckless disregard of whether they were false or not."

The judgment was thus reversed. The same thing should be done here.

There was no "intent to harm through falsehood" and nothing in the trial court record would justify such a finding by the court or jury.

Respondent seeks a total of $550,000.00 damages. *New York Times* sought to eliminate the "chilling effect" of such litigation. Petitioners should not be put to the expense of another trial.

CONCLUSION

We repeat what we said in our earlier briefs.

Respondent was much in the public eye. He was a constant actor on the public stage.

He sought to continue as Mayor. He left his business with his brother James, and was almost a full-time candidate for another public office, County Tax Assessor.

Respondent sought and received much publicity. He kept a scrap book (TT. 3, A. 27). It was *because of all this publicity* that the area editor knew of Respondent, and automatically used his name instead of his brother James.

In Respondent's libel suit he claimed damages for loss of the elections, and for loss of public standing. He cannot disavow his own self-affixed label in his libel suit.

This is the very situation the Federal rule was intended to cover.

In the famous words of our former President:

"If you can't stand the heat, stay out of the kitchen!"

Respondent chose to seek the public spotlight. He made his own choice. Not only did he choose to run but he chose to sue for damages in that public figure capacity.

We respectfully submit the Court should reverse the judgment below and order judgment entered for Petitioners.

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June, 1970.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

NO. 1373

OCALA STAR-BANNER COMPANY,
a corporation, and LOYAL PHILLIPS,

Petitioners,

vs.

LEONARD DAMRON,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

Granted May 4, 1970

BRIEF OF RESPONDENT

OPINIONS BELOW

The opinion of the District Court of Appeal, First District, State of Florida, is reported at 221 So. 2d. 459. (A. 18) The opinion of the Florida Supreme Court refusing to review said decision (SC 8) is reported at 231 So. 2d. 822. (A. 21) The following symbols will be used:

"R" for trial clerk's certified record (Volume I)

"TT" for court reporter's separate volumes of trial transcript (Volumes II and III)

"DC" for record volume in the District Court of Appeal (Volume VI)

"SC" for the record in the Florida Supreme Court

"A" for the printed Appendix in this Court

JURISDICTION

The Respondent raised the question of this Court's jurisdiction in Respondent's Brief in Opposition because of Petitioners' failure to timely raise a federal constitutional question. This point is not restated here because this Court has taken the position it will make an independent examination of the whole record . . . so as to assure themselves that judgment does not constitute a forbidden intrusion on the field of free expression. *New York Times Co. v. Sullivan* (1964) 376 U.S. 254 at 285; *Beckley Newspapers Corp. v. Hanks* (1967) 389 U.S. 81 at 82; *Greenbelt v. Bresler* (5-18-70) .... U.S. .... Case No. 413 October Term, 1969.

QUESTIONS PRESENTED

1. Does a libel judgment against newspaper Petitioners in favor of Respondent Mayor and candidate for County Tax Assessor (primarily covering damages for loss of election) deprive Petitioners of their Constitutional rights where the record contains no evidence of (or even consideration given to necessity for) actual malice as defined by this Court?

2. Does the State Court's instruction to a jury (affirmed by the District Court of Appeal) that it must return a libel verdict against Petitioners in favor of Respondent Mayor and candidate for County Tax Assessor without any regard for

actual malice, as defined by this Court, deprive Petitioners of their Constitutional rights?

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States

Amendment I:

> "Congress shall make no law . . . abridging the freedom of speech or of the press . . ."

Amendment XIV:

> ". . . (N) or shall any State deprive any person of life, liberty, or property, without due process of law . . ."

STATEMENT OF THE CASE

Respondent, Leonard Damron, the Mayor of Crystal River, recovered a jury verdict for $22,000.00 in compensatory damages and judgment was entered thereon against Petitioners after a trial on only the issues of damages. (R. 18-19, A. 14) The Petitioners prior to trial had admitted their liability as to compensatory damages. (TT. 274, A. 80) This action was originally filed by Respondent on July 29, 1966, and was tried in January of 1968.

The Petitioners first raised their argument that a federal constitutional question existed in their Motion for New Trial filed February 2, 1968. (R. 20-21, A. 15) A Motion to Dismiss and a Motion to Strike (R. 7-8, A. 10-11) were filed by Petitioners, however, both of these motions were completely void of any federal constitutional question being stated therein or argued and thus being raised at the time of these motions, as required by the Florida Rules of Civil Procedure in effect at the time these motions were filed. (A. 23) The

Petitioners' Answer (R. 10-12, A. 12-13) did not raise any federal constitutional questions and no jury instructions relating to a federal constitutional question were requested, as required by the rules for the assignment of error. (A. 25)

The trial court granted Respondent's Motion to Amend his Complaint without Petitioners' objection at the close of Respondent's case in chief to conform with the evidence to extend the Respondent's damages to include embarrassment, mental anguish and upset. (TT. 145-146, A. 70)

The Petitioners' news reporter, Lucy Ware, for several months before the publication of the defamatory false news article on April 18, 1966, (TT. 10, A. 28 and Respondent's Exhibit 3, A. 84) had been improperly reporting events relating to Respondent. (TT. 15-18, A. 30-32 and TT. 52-53, A. 54) This improper reporting was called to the attention of Petitioners by the Respondent prior to the publication on April 18, 1966, of the defamatory article sued upon. (TT. 15, A. 30-31) On January 30, 1966, Petitioners published a news article prepared by Lucy Ware correctly reporting the facts and clearly indentifying James Damron as the party involved. (Petitioners' Exhibit 1, A. 85, and TT. 148, A. 70)

The defamatory false article sued upon was published 13 days after it was a news fact. (TT. 35, A. 43) The court event of passing over the case occurred on April 5th and the article was published on April 18th. The Respondent was a candidate for the public office of tax assessor at the time this defamatory article was published. The election day was on May 3rd, 15 days after the false article was published. (TT. 37, A. 44)

The reporter, Lucy Ware, testified that she used two procedures for transmitting a news story to the Petitioner newspaper. "If the story is not of particular news interest, I

generally type it and mail it in since the mail service is one day. If the story is of particular news value, I phone it in early in the mornings." (TT. 150, A. 72) The news story sued upon was telephoned to the Petitioner newspaper. (TT. 151, A. 72)

Lucy Ware further testified that in the conversation with Mr. Meier when she telephoned in the defamatory false news story she was informed to change the dateline in that story from Gainesville (where the action had actually occurred) to Inglis. (Respondent's Exhibit 3, A.84 and TT. 152, A. 72)

Fred Meier, the Petitioners' area editor who received the defamatory false news story from the reporter, Lucy Ware, over the telephone testified he had a mental aberration and changed the name from James Damron to Leonard Damron. He further testified that he had handled quite a few news stories about Leonard Damron, (TT. 162-163, A. 75-76) but on cross examination he testified that he knew the Respondent, Leonard Damron, lived in Crystal River and the story was datelined Inglis. He further testified that he had been in the newspaper business 37 years and he made the change in names without checking. (TT. 166, A. 76)

The Respondent's witness, Land, a newspaper reporter, testified that you don't change names in the trade of news journalism without checking your source. (TT. 132-133, A. 68-69)

The Petitioners published in their newspaper on April 24, 1966, a letter to the editor written by Glenn Bland under the title, "So Sorry" without denial of its contents at the time of the publication. This letter spelled out the policy of the Petitioners when it stated, "You evidently believe in the policy of lies, misquotes, carelessness and distortion because you con-

tinue to do it." (Petitioners' Exhibit 4, A. 86, TT. 140-141, TT. 183, A. 69)

The election day on which the Respondent was running for the public office of tax assessor was on May 3, 1966. Respondent had always been a successful candidate in elections prior to the publication of the defamatory false news article and received voter acceptance by large margins. (TT. 25-28, A. 37, 38, 39) A very cold reaction resulted from the voting public as a result of this article. (TT. 24, A. 36) The Respondent was defeated in this election. (TT. 25, A. 37) The routine comment was that Mr. Damron was running for office and they didn't care to vote for a man like that. (TT. 105-106, A. 65) The defamatory false article degraded the Respondent in the public eye and was a general comment of the public. (TT. 109-110, A. 66)

The printing of the retraction to the defamatory false article had no effect on the damage created by the defamatory false article. (TT. 112, A. 67) The Respondent as a result of this article had lost general public acceptance. (TT. 117, 123, A. 67-68) The contents of the defamatory false article traveled like wild fire (TT. 130, A. 68) with the reaction that the Respondent was a nut running for public office when under federal indictment. (TT. 129, A. 68) These comments continued up to the actual election. (TT. 130, A. 68)

The Respondent felt that the defamatory false news article had ruined him, he couldn't sleep, couldn't eat; (TT. 12, A. 29) Respondent and his family were severely mentally affected, embarrassed and his business was injured; (TT. 21-23, A. 35, 36) and Respondent's business suffered as a result of this article. (TT. 28-30, A. 39, 40)

The Respondent was a well-known personality and enjoyed a good reputation. (TT. 66, A. 61 and TT. 87, A. 63) Respondent had a reputation for honesty. (TT. 92, A.

64) The public spoke well of the Respondent prior to the publication of the article and poorly of him after the publication of the article. (TT. 67-68, A. 61, and TT. 93-94, A. 64)

The defamatory false news article had an adverse affect upon Respondent's personality and appearance. (TT. 69, A. 62) Prior to the publication of the article, Respondent was optimistic and had a generally good mental attitude. After the publication of the article he was very upset mentally, nervous, brokenhearted aand browbeaten. (TT. 89, A. 63, and TT. 93, A. 64) After the article Respondent was concerned, wasn't his old self and seemed worried. (TT. 99, A. 65) Petitioners' witness, Hood, testified that Respondent was concerned and that the article worried him. (TT. 211, A. 77)

The District Court of Appeal affirmed the decision of the trial court on the basis of the article being about a public official and contained no comment relating to official conduct of the Respondent. (A. 18, DC 1)

The Florida Supreme Court dismissed this appeal confirming the decision of the District Court of Appeal that there had been no construction of the United States Constitution by that Court. (A. 21, SC 8)

SUMMARY OF ARGUMENT

The evidence supports the Petitioners' admission of liability in this cause because the Petitioners knew at the time that the defamatory falsehood they published was either false or was published with a reckless disregard of whether it was false or not, showing a highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers.

The freedom of speech and press are not absolute rights but are subject to the constitutional right guaranteeing our

Nation's republican form of government by requiring free elections unfettered by falsehoods calculated to defame the reputation of a candidate for public office.

The charging of a public official or candidate for public office with a libelous defamatory falsehood of a perjury indictment on a matter unrelated to the office held or sought is a private libel and does not abridge the freedom of speech or other freedoms protected by the First Amendment to the United States Constituton.

ARGUMENT

1. Why Petitioners Are Liable

The fact Petitioners admitted their liability before trial is evident from the statement of the trial judge when he entered a direct verdict on the question of liability for the Respondent and stated, "Well, I think liability as to compensatory damages is admitted in this case." The Petitioners' trial attorney did not object to this statement or the directed verdict, rather Petitioners' trial attorney entered into a discussion of how the jury instructions on the question of compensatory and punitive damages would be worded. (TT. 274-277, A. 80, 81)

This Court has ruled that where a statement was made with actual malice, that is with the knowledge that it was false or with reckless disregard of whether it was false or not, that the publisher of the defamatory material would be liable. (*New York Times Co. v. Sullivan* 376 U.S. 254 at 279)

A review of the testimony in evidence in this trial discloses that the reporter, Lucy Ware, for several months prior to the publication of the defamatory false news article had been improperly reporting events relating to the Respondent.

Further, that on January 30, 1966, Petitioners published a story properly identifying Respondent's brother, James Damron, a relatively unknown individual, as having been indicted for the crime of perjury. This news story was written in normal form with an average size headline. (Petitioners' Exhibit 1, A. 85)

An examination of the defamatory false news article sued upon published on April 18, 1966, (Respondent's Exhibit 3, A. 84) shows that a composition of the article itself was a three-column spread with a banner headline directed to call attention to the Respondent as being the party involved.

A further examination of the testimony of Lucy Ware, the news reporter, and Fred Meier, the area editor, shows that there was a discussion at the time the defamatory false news article was transmitted to Fred Meier by telephone regarding the dateline. Lucy Ware testified that she was instructed in this conversation to change the dateline from Gainesville to Inglis where James Damron resided. (TT. 152, A. 72) Obviously when this discussion ensued, it is hardly conceivable that Fred Meier could have had a mental aberration and changed the name from James to Leonard when Fred Meier, by his own testimony, admitted he was well familiar with the fact that Leonard Damron, the Respondent, resided in Crystal River, for he, Fred Meier, had written several articles about Leonard Damron during the period of time he had been employed by the Petitioner newspaper. Fred Meier admitted on the witness stand that he had spent 37 years in the newspaper business and that he changed the name to identify the Respondent as the party involved in a perjury matter. (TT. 162-163, A. 75-76, and TT. 166, A. 76)

The Respondent's witness, Land, a newspaper reporter, testified that changing a name without checking just was not done in news journalism. (TT. 132-133, A. 68-69)

How more conclusive can the facts be that Petitioners were liable for their act in publishing this defamatory falsehood when they themselves on the 24th day of April, 1966, published the letter to the editor from Glenn Bland without any denial of its contents wherein Glenn Bland charged the Petitioners with a policy of lies, misquotes, carelessness and distortion because they continued to do it. (A. 69, Petitioners' Exhibit 4, A. 86)

The facts in this case are clearly distinguishable from the facts set down in the *Greenbelt v. Bresler* case. (*Greenbelt v. Bresler* (5-18-70) Case No. 413 October Term, 1969, ... U.S. ....) In the *Greenbelt* case the news articles relating to the Respondent, Bresler, were true articles. Further, the evidence in the Greenbelt case clearly showed that no reader could have thought that either the speakers at the meetings or the newspaper articles reporting their words were charging Bresler with the commission of a criminal offense. This is not true in the article published about the Respondent where it clearly and succinctly stated that the Respondent had been charged with the crime of perjury, and was a news story completely unrelated to any of the previous articles or discussions previously reported by the Petitioner newspaper, which was not the factual situation in the *Greenbelt v. Bresler* case.

It is very clear from the evidence in this cause that the conduct of the Petitioners in reporting erroneous news stories about the Respondent prior to the publication of the defamatory false news article the fact that the news stories were erroneous and this fact had been called to the attention of the Petitioners by the Respondent before the publication of the defamatory false news article. The further fact that Petitioners had already published a story in normal news form as to the actual incident involved in the news two and one-half months before the defamatory false news article can lead but

to one conclusion — that the defamatory false news article was published with malice, that is with the knowledge that it was false or with the reckless disregard of whether it was false or not. *(New York Times Co. v. Sullivan)*

2. The Rule Allowing Recovery by Public Figures Applies

The facts in this cause clearly show that the rule laid down in *Curtis Publishing Company v. Butts* 388 U.S. 130 at 155, applies to this cause, which states:

> "We consider and would hold that a 'public figure' who is not a public official may also recover damages for a defamatory falsehood whose substance makes substantial danger to reputation apparent, on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers."

An examination of the facts in this cause shows first the court event of the passing over of the James Damron case occurred on the 5th day of April. The defamatory false newspaper article was published on the 18th day of April, 13 days later. Obviously the news was not hot news, that is news that required immediate dissemination, because first, the status of the indictment for perjury had already been published by the Petitioners on January 30, 1966, and the mere fact that a case was passed over affecting an unknown individual could scarcely be considered as a matter necessitating rapid dissemination in a series of events, but was an extreme departure from accepted publishing standards as shown by the fact that a name was changed by Meier, the area editor, without first checking, which was contrary to accepted publishing standards. Further, the unexplained occurrence by the news reporter, Lucy Ware, when she testified

that if a news story was not of particular news interest, she generally typed it and mailed it in since the mail service was one day, but if it was of *particular news value* she phoned it in early in the mornings, (TT. 150, A. 72) and she telephoned this news story in even though it was 13 days old and not a matter of public interest.

Therefore, the distinction made in allowing Wallace Butts to recover in his action against *Curtis Publishing Company* is clearly applicable to this cause, because there is a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers.

3. Free Elections and False Defamations

Article IV, Section 4, of the *United States Constitution* guarantees the republican form of government. The XVth Amendment and the XIXth Amendment to the *United States Constitution* provide that the rights of citizens in the United States to vote shall not be denied or abridged on account of race, color, sex or previous conditions of servitude. Article III, Section 26, of the *Florida Constitution* in effect at the time the defamatory falsehood was published provided laws shall be passed regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult or other improper practice. The Florida Legislature at the time the defamatory falsehood was published had enacted and there was in effect *Section 104.061(1) Florida Statutes*, which provided:

> "Whoever by bribery, menace, threat or other corruption whatsoever, either directly or indirectly, attempts to influence or *deceive* any elector in giving his vote or ballot or preparing the same, or to deter him from giving the same, or disturbs or interferes with him in

the free exercise of the right of suffrage at any election shall, upon conviction, be guilty of a misdemeanor on the first conviction and a felony on the second conviction." (Emphasis supplied)

It is clear, therefore, that the right to free elections unfettered by falsehoods calculated to defame the reputation of a candidate is a true right protected by the United States Constitution, Florida Constitution and Florida Statutes.

An examination of the facts in this cause clearly shows that the Respondent, as a candidate, was running for the public office of tax assessor in an election to be held on May 3, 1966, when the defamatory falsehood was published on April 18, 1966. The facts further show that prior to this publication the Respondent had always been a successful candidate in elections and received voter acceptance by large margins. Immediately after the publication of this article, although a correction was printed, the Respondent was confronted with a very cold reaction from the voting public and was miserably defeated in this election, and the general comment indicated after publication of this falsehood that the voters didn't care to vote for a man like that, indicating that he had been degraded in the public eye, that he had lost general public acceptance, that he must be a nut running for public office when under federal indictment, all of this occuring and the testimony showing that the contents of this false defamatory news article traveled like wild fire.

How then can the constitutional guarantees of free government and free elections be protected if newspaper journalism is to be afforded the opportunity to publish defamatory falsehoods which obviously bring defeat of a candidate and degrade him in the eyes of the voting public? What better opportunity can be afforded to the press to dictate and choose

future public office holders if they be allowed to excuse themselves for such defamatory falsehoods on the flimsy excuse, which obviously in this case isn't even true, that the area editor had a mental aberration? The condition of mind can only be determined as a matter of professional opinion and then is only the opinion of the psychiatrist and not a proof of an actual fact. We cannot proceed in the area of free government by the people and for the people if we void the responsibilities of the press to the voting public under the right of freedom of the press which should not be an absolute right without responsibility.

Petitioners have argued that the defamatory falsehood which was published about the Respondent should be allowed as a matter of public interest. (Respondent's Exhibit 3, A. 84) Such an argument is obviously fallacious in that if this be true the press could print any falsehood it so desired to generate the public interest and not be liable therefore and if carried to its ultimate extent would create chaos in the minds of the citizens of this country to such an extent as to abrogate all the rights guaranteed to the citizens of this country under the Constitution of the United States.

The various decisions cited by Petitioners subsequent to the *New York Times Co. v. Sullivan* decision, which are predicated upon this decision, are designed to augment the right of free discussion in matters of public interest and public issues. Free discussion contemplates ample time to resolve these issues in the minds of each individual, but how can such an issue as a defamatory falsehood charging a candidate for public office of having been indicted with the crime of perjury be amply discussed, amplified and resolved in the mind of an individual voter or all voters, as it may be, within the period of 15 days and as the record shows in this cause, even though a correction was printed by Petitioners, it had little, if any,

effect on the minds of the general voting public at this crucial time just before election.

The example shown in this cause of how the right to free elections may be so easily violated can lead to the one conclusion that the standard of care required of the news media at the time of election must necessarily be much higher and the publisher who holds himself or his agents out as the author and composer has no right to publish falsehoods of a personal nature without being liable in damages therefor.

4. Official Conduct, Public Interest and Perjury

The rule laid down in *New York Times Co. v. Sullivan* specified unequivocally that it was limited to the area of *official conduct* of public officials in libel actions. Had this Court not intended to confine this rule to official conduct the rule would not have been so written and amplified by the footnote thereto pointing out that official conduct relates to the performance of official duties. (*New York Times Co. v. Sullivan* 376 U.S. 254 at 283 note 23)

This point was further clarified by the concurring opinion in *New York Times Co. v. Sullivan* of Justice Goldberg, in which Justice Douglas joined, which stated:

> "This is not to say that the Constitution protects defamatory statements directed against the private conduct of a public official or private citizen. Freedom of press and of speech insures that government will respond to the will of the people and that changes may be obtained by peaceful means. Purely private defamation has little to do with the political ends of a self-governing society. The imposition of liability for private defamation does not abridge the freedom of public speech or any other freedom protected by

> the First Amendment. This, of course, cannot be said 'where public officials are concerned or where public matters are involved . . . One main function of the First Amendment is to ensure ample opportunity for the people to determine and resolve public issues. Where public matters are involved, the doubts should be resolved in favor of freedom of expression rather than against it.' Douglas, The Right of the People (1958), p. 41." *New York Times Co. v. Sullivan* 376 U.S. 301-302.

Petitioners have attempted to draw an analogy between civil rights and election campaigns and a defamatory falsehood charging that the Respondent had been indicted for perjury on a matter which was totally unrelated to the public office held or sought by the Respondent. The defamatory falsehood was directed toward the personal conduct of the Respondent, and, therefore, is within the qualified area of private conduct of a public official lying outside of the rule set down in the *New York Times Co. v. Sullivan.*

Although Petitioners are correct that the term official conduct does not apply as such to a public figure, the decisions of this Court and decisions in which this Court has denied Certiorari on the public figure or public official concept relate to matters directly involved as a public issue or a matter of public interest. *(All Diet Foods v. Time* 290 N.Y. Supp. 2d. 445, retail health foods and special diet food stores and restaurants; *Associated Press v. Walker* 388 U.S. 130, civil rights; *Beckley Newspapers Corp. v. Hanks* 389 U.S. 81, *Garrison v. Louisiana* 379 U.S. 64, *Henry v. Collins* 380 U.S. 356, *New York Times v. Connor* 365 F. 2d. 567, *New York Times Co. v. Sullivan* 376 U.S. 254, *Rosenblatt v. Baer* 383 U.S. 75, *St. Amant v. Thompson* 390 U.S. 727, *Washington Post v. Keogh* 365 F. 2d. 965, conduct of a public official in the conduct of his public office; *Bon Air v. Time*

295 F. Supp. 704, well known hotel which accommodates hundreds of visitors in a master's golf tournament; *Curtis Publishing Co. v. Butts* 388 U.S. 130, the activities of a nationally known football coach and the conduct of his nationally known football team affairs; *Farnsworth v. Tribune* 253 N.E. 2d. 408, quackery and public health; *Fotochrome v. N. Y. Herald Tribune* 305 N.Y. S. 2d. 168, matters relating to a public corporation's stock; *Greenbelt v. Bresler* (5-18-70) Case No. 413 October Term, 1969, conduct relating to matters in public controversy; *Time v. Hill* 385 U.S. 374, a statute relating to the invasion of right of privacy; *Time v. McLaney* 406 F. 2d. 565, a professional gambler who injected himself in an election in a small foreign country; *United Medical v. C.B.S.* 404 F. 2d. 706, mail order medical testing laboratories; *Wasserman v. Time* (C.A.D.C. 3-3-70), an attorney photographed with men involved in mafia activity; *Merritt-Chapman v. Associated Press* 33 Fla. Supp. 102, the financial affairs of a public corporation.)

No where in their brief have Petitioners related the crime of perjury as a pre-existing topic subject to discussion as a public matter, public issue or public interest and subject to public debate. Rather, Petitioners argue that once the defamatory falsehood has been published it then becomes a matter of public interest which is the natural consequence of such an act where it relates to a public figure or public official even though the act charged is totally unrelated to any of the activities of such an individual.

Therefore, there is but one conclusion, that the *New York Times Co. v. Sullivan* rule and the *Associated Press v. Walker* rule can have no application to the facts involved in this cause.

5. Miscellaneous Considerations

The Petitioners complain of the fact that this cause of action was filed in Marion County, Florida, the location of the principal office of the Petitioner, Ocala Star-Banner, rather than in Citrus County, yet the record is void of any motion on the part of the Petitioners to have the venue of this action changed as required by *Florida Rules of Civil Procedure.* (A. 23)

The Petitioners make reference in their brief to a decision in *Merritt-Chapman v. Associated Press* 33 Fla. Supp. 102, in support of their argument, however, Petitioners fail to point out that this decision was rendered on primary facts which were not disputed and showed that the newspaper acted in good faith and without any malice.

The Petitioners indicate on Page 15 of their brief their understanding of how the jury verdict was determined in this cause, however, their contention is not supported by the record nor any evidence of Petitioners' attorney having conferred with a member of the jury on how they reached their verdict. Respondent's attorney has had no direct or indirect contact with members of the jury and, therefore, he does not know how the jury verdict was determined.

CONCLUSION

Judgment in this cause must be affirmed for the reasons herein stated.

Respectfully submitted,

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E. ROBERT SEAVER, C

In The Supreme Court of the United States

OCTOBER TERM, 1970

No. 118

OCALA STAR-BANNER COMPANY, et al.,

Petitioners,

vs.

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Respondent.

On Writ of Certiorari To The District Court Of Appeal, First District, State of Florida

Certiorari Granted May 4, 1970

PETITIONERS' REPLY BRIEF

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November, 1970.

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Certiorari Granted May 4, 1970

PETITIONERS' REPLY BRIEF

As permitted by Supreme Court Rule 41.3, Petitioners file this brief in reply to brief of Respondent on the merits.

This Court granted certiorari on May 4, 1970, and the issue here is whether the so-called *New York Times* rule applies. Respondent has frankly summarized his position on page 8 of his brief:

> "The charging of a public official or candidate for public office with a libelous defamatory falsehood of

> a perjury indictment on a matter unrelated to the office held or sought is a private libel and does not abridge the freedom of speech or other freedoms protected by the First Amendment to the United States Constitution."

Respondent completely overlooks the fact that as stated in *Garrison v. Louisiana* (1964) 379 U.S. 64, at 76 and 77, the *New York Times* doctrine extends to "*private* reputation as well as public reputation", and "anything which might touch on an official's *fitness* for office is relevant".

How a "perjury indictment" could be unrelated to Respondent's fitness for public office, Respondent does not attempt to explain.

Respondent also ignores that it was he who injected the public figure element of damage into the case.

Not only did the Trial Court refuse to strike Respondent's claims in his complaint for damage to Respondent in his capacity as Mayor and candidate for Tax Assessor, but as pointed out by the opinion of the District Court of Appeal, "a *directed verdict* on the question of liability was granted and the case went to the jury on damages only". (A. 19) Petitioner's evidence concerned almost entirely the alleged loss of the elections because of the article. No malice was alleged or proved.

The principal purpose of this reply brief is to answer some of the statements made by Respondent and to further emphasize our position that not only should the decision of the Florida Court be reversed but that a judgment should be entered up for Petitioners.

JUDGMENT SHOULD BE ENTERED FOR PETITIONERS

There is nothing in the record here which would support a judgment for the Respondent. Judgment should be directed to be entered for the Petitioners.

Far from the record showing "with convincing clarity" that the alleged libel was published "with knowledge that it was false or with reckless disregard of whether it was false or not" (*New York Times vs. Sullivan* (1964) 376 U.S. 254, at 280), the record here clearly shows that at most there was carelessness or negligence. There was no "intent to harm through falsehood", but merely a human error.

Pages 4, 5, 8 and 9 of his brief, where Respondent discusses the evidence, clearly reveal that it was Area Reporter Lucy Ware who had been in the past "improperly reporting events relating to Respondent". But Mrs. Ware did not make the error complained of here. She called in the correct name, "James Damron", as being the person indicted. It was the new man, the new Area Editor, Fred Meier, who had been on the job about a month, who *confused* the names. Meier used in the story the name of the public figure, Leonard Damron, rather than that of his brother, James Damron. Respondent recites no evidence charging Meier with anything other than carelessness or negligence. Meier had not even met Respondent at the time of the story.

There is just no evidence of "express malice" sufficient to take this case to the jury, let alone support a judgment against the newspaper.

And it must be continuously borne in mind that the case was not even submitted to the jury on liability. A verdict was directed for the Respondent on liability. The only ques-

tion that went to the jury was "how much" money he was to receive.

Incidentally, Gainesville, where Judge Harrold Carswell held Federal Court, was a considerable distance from the little town of Crystal River, where resided both the Respondent, Leonard Damron, and the Area Reporter, Mrs. Ware. There is nothing to show that Mrs. Ware got the information prior to the morning on which she telephoned the story to Area Editor Meier. In any event, Mrs. Ware did not make any error.

MINORITY OPINION

Perhaps Respondent's difficulty is compounded by his erroneous reliance, at pages 7, 11 and 12 of his brief, on the *minority* opinion in Curtis v. Butts (1967) 388 U.S. 130, at 155. He fails to recognize that the majority of this Court refused to go along with the reasoning he quotes and on which he relies.

NO BASIS FOR ANOTHER TRIAL

It is the position of the Petitioners that judgment should be entered up for Petitioners based on the record made at the trial. There is just no evidence of express malice within the Constitutional Rule to go to the jury. Petitioners should not be put to the trouble and expense of another trial.

When the *Beckley* case, infra, went back down, the Trial Court, which had originally ruled against the newspaper and let the case go to the jury, this time entered up summary judgment for the newspaper. This was affirmed by the Supreme Court of Appeals of West Virginia in Hanks v. Beck-

ley (1970) 172 S.E.2d. 816. Both the Trial Court and the Supreme Court held, in the light of the decisions of this Court, that:

> "Nothing presented by the plaintiff created a genuine issue for jury consideration as to the existence of malice, and the defendant was entitled to a judgment as a matter of law."

See also *Beatty v. Ellings, et al.*, (Minn. 1969) 173 N.W.2d. 12, where the doctrine was applied to *private citizen* "plaintiff, a resident of Winona, who has been an active opponent of these public (housing) programs, perhaps in part because he is, as his complaint discloses, the owner of an affected building". The Court reversed the lower Court for *not* granting summary judgment against the plaintiff, who had been called by public officials at public meetings "a son of a bitch", "a liar", and who had been told "you ought to see a psychiatrist". The Minnesota Supreme Court said that there was no evidence "of actual malice" within the *New York Times* rule. The Court, after citing *New York Times, Associated Press*, and *St. Amant*, said:

> "Plaintiff generally alleged that the defamatory words were 'maliciously' spoken, but there is not a sufficient pleading of constitutional malice. More importantly, there was *no evidence of such actual malice.* The trial court in denying defendant's motion for summary judgment stated that 'a possible question of privilege would be for the jury'. But the *question of privilege exists as a matter of law*".

The Fifth Circuit in *Dacey v. Florida Bar, et al.*, (C.A. Fla., July, 1970) 427 F.2d. 1292, directed that summary judgment be entered in favor of defendant Anderson. The court held

that libel plaintiff *author* Dacey was *not* a public officer or candidate but that he *was* a public figure. The court applied this standard:

> "His (Anderson's) statement that Dacey was convicted was *literally false* but his article was true in stating that an action had been brought against Dacey for the unauthorized practice of law. *Even assuming reportorial negligence, this does not meet the definition of actual malice in Sullivan.*"

We have cited in our principal brief numerous libel cases where judgment was entered up for the defendant newspapers as a matter of law, e.g., *Merritt-Chapman & Scott Corp. v. Associated Press, et al.* (Fla. CC, 1970) 33 Fla.Supp. 102, and cases cited therein, as well as in our Brief.

Respondent alleged punitive damages (A. 8) and vigorously attempted to show malice. Respondent was permitted to introduce everything he had on malice. Notwithstanding, the jury brought in *no* verdict for punitive damages but one for "actual" damages only (A. 14). These latter damages cannot stand because despite all of Respondent's efforts, he failed to show with anything even faintly resembling "convincing clarity", publication "with intent to harm through falsehood". After all of this, there is no justification for putting Petitioners through another trial. Respondent's own case shows a complete lack of *New York Times* "express malice".

PRIOR ARTICLES NOT ADMISSIBLE ON MALICE

Respondent's position seems to be that the earlier stories written by Mrs. Ware, and read to the jury, on some theory were sufficient to show constitutional "malice" (assuming this question had been submitted to the jury, which it had not).

On page 28 of our main brief, we point out that even if Meier, the man who made the error here and is charged with the "malice", had written these prior articles, which he did *not*, they were so innocuous that they could not possibly be the basis for the finding of "express malice".

But over and beyond that, it is our position that evidence of *prior* ill will, which does not have the slightest tendency to prove knowledge of falsity at the *time* of the instant story, must be excluded if debate on public issues is to remain "uninhibited, robust, and wide open".

This Court has repeatedly held that an intent to harm (ill will) is completely different from an intent to harm *through falsehood*. This Court has reversed for failure to recognize the distinction. See *Garrison*, supra; *Henry v. Collins* (1964) 380 U.S. 356, at 357; *Beckley v. Hanks* (1967) 389 U.S. 81; and *Greenbelt*, infra.

If prior articles were admissible to show ill will under the *New York Times* rule, then a newspaper could speak out with comparative freedom about some one unknown to it and to the public. But the same newspaper would not dare to say anything about a controversial public figure about whom it had written prior articles, who had a bad reputation, and against whom the publisher might be accused of having hatred or ill will.

As this Court stated as recently as *Greenbelt v. Bresler* (May 18, 1970) ..... U.S. ....., 26 L.Ed.2d 6, a judgment under the New York Times rule cannot be based on a "combination of falsehood and general hostility". If a jury is ever permitted to get into this question of general hostility, then no newspaper can take the risk of trying to get the facts before the public. We quote from *Greenbelt*, 26 L.Ed.2d. 6, at pages 12 and 13:

"The judge then defined *'malice' to include 'spite, hostility, or deliberate intention to harm'*. Moreover, he instructed the jury that 'malice' could be found from the 'language' of the publication itself. *Thus the jury was permitted to find liability merely on the basis of a combination of falsehood and general hostility.*

This was error of constitutional magnitude, as our decisions have made clear. 'This definition of malice is constitutionally insufficient where *discussion of public affairs* is concerned; "(w)e held in New York Times that a public official might be allowed the civil remedy only if he establishes that the utterance was false and that it was made *with knowledge of its falsity or in reckless disregard of whether it was false or true*"'. Rosenblatt v. Baer, supra, at 84, 15 L.Ed.2d. at 604. 'Even where the utterance is false, the great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any except the knowing or reckless falsehood. *Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred . . . .*' Garrison v. Louisiana, 379 U.S. 64, 73, 13 L.Ed.2d. 125, 132, 85 S.Ct. 209. See also Beckley Newspapers Corp. v. Hanks, 389 U.S. 81, 82, 19 L.Ed.2d. 248, 250, 88 S.Ct. 197. And the constitutional prohibition in this respect is no different whether the plaintiff be considered a 'public official' or a 'public figure'. Curtis Publishing Co. v. Butts, supra."[1]

Note 1:

When the mandate of this Court in *Greenbelt* went down to the Court of Appeals of Maryland, that Court on July 7, 1970, vacated its prior mandate affirming plaintiff's judgment in the Maryland Circuit Court, ordered that the judgment obtained by plaintiff be reversed, and taxed costs against the plaintiff. Counsel advise us that inasmuch as the Maryland Court reversed without specifically remanding the case in accordance with its rules, the case is terminated.

As previously pointed out in *Garrison*, supra, at pages 73 and 74:

> "Under a rule like the Louisiana rule, permitting a finding of malice based on an intent to inflict harm, *rather than an intent to inflict harm through falsehood*, it becomes a hazardous matter to speak out against a popular politician, with the result that the dishonest and incompetent will be shielded . . . . . in the case of charges against a popular political figure, it may be almost impossible to show freedom from ill will or selfish political motives."

And, concluding at page 79:

> "**** *defeasance of the privilege is conditioned, not* on mere negligence, but on reckless disregard for the truth. Reversed."

The newspaper will be "convicted" by the jury, not on the basis that it knew the story was false or that it had a "high degree of awareness of probable falsity" – but on the basis of its general hostility to, or hatred of, the plaintiff, as showing "malice".

No amount of ill will can change truth to falsity or falsity to truth. But if the jury be permitted to take prior ill will or hatred or prior articles into account in determining constitutional "malice", a verdict for the plaintiff is almost assured. The jury will get away from knowledge of falsity, per se, and assume it to exist because of hatred or ill will. No amount of instruction or charge from the Court will change this factor.

Especially is this true if, in the privacy of the jury room, the jury has, with the blessing of the Court, prior articles evidencing hatred or ill will. Inevitably, this will influence a finding of "malice".

CONCLUSION

Respondent sought publicity. He was a constant actor on the public stage. It was solely because of all his public activities and publicity that the new Area Editor knew *of* Respondent and used Respondent's name.

As our former President said:

"If you can't stand the heat, stay out of the kitchen!"

But Respondent made his own choice – to seek the public spotlight. He has made his own bed and must lie in it.

As made clear by Respondent's brief, Respondent specifically alleged and recovered damages accruing to him as Mayor of Crystal River and candidate for County Tax Assessor, for alleged loss of elections growing out of a newspaper story. Respondent cannot now disavow his own self affixed public figure label.

The Trial Court directed a verdict for Respondent on liability with no proof of Constitutional "malice". The only question put to the jury was the amount of the damages.

Based on Respondent's own pleadings, evidence and arguments, the judgment below should be reversed and the lower court directed to enter judgment for Petitioners.

Respectfully submitted,

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November, 1970.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

OCALA STAR-BANNER CO. ET AL. *v.* DAMRON

CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA

No. 118. Argued December 17, 1970—Decided February 24, 1971

Petitioner newspaper published a false story that respondent, then a mayor and a candidate for county tax assessor, had been charged with perjury in federal court, and respondent sued for libel. The judge instructed the jury that the charge was libelous per se and that respondent could recover damages without showing malice. The jury awarded compensatory damages. The judge denied the newspaper's motion for a new trial on the basis of the "actual malice" test of *New York Times Co.* v. *Sullivan*, 376 U. S. 254, on the ground that the article did not refer to respondent's official conduct. The Florida District Court of Appeal affirmed, holding that the *New York Times* rule did not apply. *Held:* A charge of criminal conduct against a public official or a candidate for public office, no matter how remote in time or place, is always "relevant to his fitness for office" for purposes of applying the *New York Times* rule of knowing falsehood or reckless disregard of the truth. *Monitor Patriot Co.* v. *Roy, ante*, p. —. Pp. 5–6.

221 So. 2d 459, reversed and remanded.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and HARLAN, BRENNAN, WHITE, MARSHALL, and BLACKMUN, JJ., joined. WHITE, J., filed a concurring opinion. BLACK, J., filed an opinion concurring in the judgment and dissenting in part, in which DOUGLAS, J., joined, see No. 62, *Monitor Patriot Co.* v. *Roy.*

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 118.—October Term, 1970

Ocala Star-Banner Company et al., Petitioners, *v.* Leonard Damron. | On Writ of Certiorari to the District Court of Appeal of Florida, First District.

[February 24, 1971]

Mr. Justice Stewart delivered the opinion of the Court.

The Ocala Star-Banner Company, the petitioner in this case, publishes a small daily newspaper serving four counties in rural Florida. On April 18, 1966, the *Star-Banner* printed a story to the effect that the respondent, Leonard Damron, then the mayor of Crystal City in Citrus County and a candidate for the office of county tax assessor, had been charged in a federal court with perjury, and that his case had been held over until the following term of that court.[1] This story was false.

[1] The story appeared under a three-column head ("Damron Case Passed Over To Next U. S. Court Term") and was as follows:

"INGLIS—A case charging local garage owner Leonard Damron with perjury was passed over for the present term of Federal Court after Damron entered a not guilty plea before Federal Judge Harold Carswell in Gainesville.

"Damron was indicted by a Federal grand jury in Tallahassee last January and charged with perjury in a 1964 civil case which resulted in damages of $65,000 being awarded to a Yankeetown couple.

"Mrs. Gail Finley alleged that Levy County Deputy Sammy Cason slammed on brakes causing her to injure her neck in October of 1962.

"Cason and Deputy Walter Beckham went to Yankeetown with a

The respondent had not been charged with any crime in federal court, nor had any case involving him been held over, but the story was substantially accurate as to his brother, James Damron.[2] Two weeks later the respondent was defeated in the election for county tax assessor.

He filed the present suit against the *Star-Banner* in the Circuit Court of Marion County, Florida, alleging that the article was "libelous per se," and that it had caused him "irreparable damages to his reputation, as an individual, public officer, candidate for public office and as a businessman." He asked $50,000 as compensatory damages and $500,000 as punitive damages. At the trial, the newspaper did not deny that the story was wholly false as to the respondent, and explained the error as the result of a "mental aberration" by one of the paper's area editors. The area editor had been working for the paper for a little more than a month. He testified that he had run several stories about the political activities of the respondent, but had never heard of his brother James. When a local reporter telephoned

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warrant for the arrest of Mrs. Jean Rich Sill, who was allegedly in the Izaac Walton Lodge.

"According to officials, the Finleys interfered with the officers, were arrested and charged with interfering with arrest.

"A conviction obtained in County Court has been upheld through appeals by the Florida State Supreme Court.

"The civil suit which followed was filed under an old, little used federal statute in which the Finleys charged former sheriff J. W. Turner and Cason with a violation of their civil rights.

"Damron testified that he had seen Mrs. Finley in a neck brace late in 1957 or early 1958 several years prior to the incident, but numerous other witnesses, summoned by the plaintiff, gave testimony, saying that Mrs. Finley had not previously worn a brace.

"Damron was released on $2,000 bond, following his arrest by federal marshals Jan. 27."

[2] The Star-Banner printed two retractions before the election.

in the story, correctly identifying the protagonist as James Damron, he inadvertently changed the name. The respondent presented evidence tending to cast doubt on this explanation.

At the close of the evidence, the respondent moved for a directed verdict on the issue of liability, and the trial judge granted the motion. The case then went to the jury on the issue of damages, with instructions which included the following:

> "The Court instructs the Jury that you need not consider whether a libel has been committed and instructs you that there must be a finding in favor of the Plaintiff in accordance with the other instructions given you by the Court. . . . You are instructed that in this case the charge made against the Plaintiff was libelous, per se, and that it created a presumption of damage to the Plaintiff but that if this presumption of damage is overcome by evidence offered by the parties and there is no proof of general damage to the Plaintiff by a preponderance of the evidence, then you cannot award anything more than nominal damages to the Plaintiff. The Court instructs the Jury that if you believe from the evidence and by the instructions of the Court that the Plaintiff is entitled to recover from the Defendants, then in addition to any compensatory damages, if any, that he may have—may recover, you may, as hereinafter stated, award the Plaintiff punitive damages when malice is shown or implied. . . . The Court instructs the Jury that malice may be implied or inferred where the charge of a felony is imputed to the Plaintiff. In other words, if you are reasonably satisfied from the evidence that the Defendants imputed the charge of perjury to the Plaintiff, of which he was not guilty, then you may infer that it was maliciously made

> and it is not necessary to prove any express malice or ill-will in order to warrant a verdict for punitive damages in favor of the Plaintiff."

The jury awarded Damron compensatory damages of $22,000 but failed to award any punitive damages.

The *Star-Banner* moved for a new trial, arguing that the case should have been sent to the jury under the "actual malice" test laid down by this Court in *New York Times* v. *Sullivan*, 376 U. S. 254. The trial judge denied the motion on the ground that *New York Times* and later cases "relating to public officials or public figures in the official conduct of their office or position are not applicable to this cause of action which was founded upon a newspaper publication of the Defendants which was libelous per se and made no reference to the public offices held or sought by Plaintiff." The Florida District Court of Appeal affirmed the judgment, holding that:

> "An examination of the defamatory publication which gave rise to this case reveals that the plaintiff's official conduct or the manner in which he performed his duties were not the basis for the inaccuracy here involved; and, hence, it does not come within the protection afforded by the rule announced in the New York Times case. It follows therefore that the trial judge correctly held that it was unnecessary for the plaintiff to show malice." 221 So. 2d 459, 461.

The Supreme Court of Florida refused to review the judgment, 231 So. 2d 822, and we granted certiorari to consider the federal constitutional issues presented.[3] 397 U. S. 1073.

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[3] The respondent's argument that the newspaper "admitted liability" at trial, and that the constitutional issue of the applicability

As the mayor of Crystal City, the respondent Leonard Damron was without question a "public official" within the meaning given the term in *New York Times* v. *Sullivan, supra.* As such, he clearly fell within the rule which "prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.*, at 279–280. In his status as a candidate for the office of county tax assessor, he fell within the same rule. *Monitor Patriot Co.* v. *Roy, ante.*

Yet it is clear that the *New York Times* test was not applied in the trial of this case. The trial judge himself resolved the issues of publication and falsehood against the newspaper. He then instructed the jury that since the article was "libelous per se," their only task was to determine damages. Since the respondent was permitted to recover without a finding that the newspaper either knew the article was false or published it in reckless disregard of its truth or falsity, the judgment must be reversed unless there is some basis for saying that the rule of *New York Times* does not apply to the particular libel in question. *Henry* v. *Collins,* 380 U. S. 356; *Curtis Publishing Co.* v. *Butts,* 388 U. S. 130, 142–143, 158 (opinion of HARLAN, J.); *Greenbelt Cooperative Publishing Association* v. *Bresler,* 398 U. S. 6.

The respondent urges upon us that a basis for distinguishing *New York Times* does exist, because the

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of *New York Times Co.* v. *Sullivan,* 376 U. S. 254, is therefore not properly before us, must be rejected since both the trial court on motion for new trial and the state appellate court considered and passed upon the constitutional question as though properly raised. *WHYY* v. *Glassboro,* 393 U. S. 117, 119; *Raley* v. *Ohio,* 360 U. S. 423, 436; *Manhattan Life Ins. Co.* v. *Cohen* 234 U. S. 123, 134.

rule of that case applies only to "official conduct," [4] and a charge of indictment for perjury committed during testimony in a federal civil rights suit is a purely "private" libel. This contention is disposed of by our decision today in *Monitor Patriot Co.* v. *Roy, ante.* In that case we held that a charge of criminal conduct against an official or a candidate, no matter how remote in time or place, is always "relevant to his fitness for office" for purposes of applying the *New York Times* rule of knowing falsehood or reckless disregard of the truth. Public discussion about the qualifications of a candidate for elective office presents what is probably the strongest possible case for application of the *New York Times* rule. And under any test we can conceive, the charge that a local mayor and candidate for a county elective post has been indicted for perjury in a civil rights suit is relevant to his fitness for office. Cf. *Garrison* v. *Louisiana,* 379 U. S. 64, 77.

The First and Fourteenth Amendments require reversal of the judgment. The case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

For separate opinion of MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, see No. 62.

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[4] *New York Times Co.* v. *Sullivan,* 376 U. S. 254, 283, n. 23.

Both the trial judge on motion for new trial and the District Court of Appeal rested their conclusion that *New York Times* did not apply partly on the ground that the defamatory article nowhere mentioned the respondent's status as mayor of Crystal City or as a candidate for county tax assessor. The respondent has not pursued that theory here.

SUPREME COURT OF THE UNITED STATES

Nos. 118 AND 62.—OCTOBER TERM, 1970

Ocala Star-Banner Company et al., Petitioners, v. Leonard Damron.	On Writ of Certiorari to the District Court of Appeal of Florida, First District.
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Monitor Patriot Co. et al., Petitioners, v. Roselle A. Roy, Etc.	On Writ of Certiorari to the Supreme Court of New Hampshire.
62	

[February 24, 1971]

MR. JUSTICE WHITE, concurring.

Inevitably, *New York Times* v. *Sullivan*, 376 U. S. 254 (1964), by imposing on libel and slander plaintiffs the burden of showing knowing or reckless falsehood in specified situations will result in extending constitutional protection to lies and falsehoods which, though neither knowing nor reckless, do severe damage to personal reputation. The First Amendment is not so construed, however, to award merit badges for intrepid but mistaken or careless reporting. Misinformation has no merit in itself; standing alone it is as antithetical to the purposes of the First Amendment as the calculated lie. *Garrison* v. *Louisiana*, 379 U. S. 64, 75 (1964). Its substance contributes nothing to intelligent decision-making by citizens or officials; it achieves nothing but gratuitous injury. The sole basis for protecting publishers who spread false information is that otherwise the truth would too often be suppressed. That innocent falsehoods are sometimes protected only to ensure access to the truth has been noted before, *St. Amant* v. *Thompson*, 390 U. S. 727, 732 (1968), and it is well that the thought is repeated today in *Time, Inc.* v. *Pape*, — U. S. —, at —.